



FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER
4755 SW GRIFFITH DRIVE
BEAVERTON, OR 97005

REGULAR MEETING
AUGUST 7, 2006
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes of the Regular Meetings of June 19 and July 10, 2006

06133 Liquor Licenses: Change of Ownership - Albertson's #559 and #582;
New Outlet - Qdoba Mexican Grill

06134 Boards and Commissions – Jason Hitzert, Beaverton Arts Commission

Contract Review Board:

06135 Bid Award - Asphaltic Concrete Requirements Contract

06136 Waiver of Sealed Bidding - Purchase Nextel Cellular Phone Service from
the State of Oregon Contract No. 2285

ACTION ITEM:

06124 APP 2006-0004: Appeal of Town Square Too - Wal-Mart Approval (DR
2005-0068) *Continued from the July 11, 2006 meeting.*

ORDINANCES:

First Readings:

06137 ZMA 2006-0005 Butler Rezone; An Ordinance Amending Ordinance No.
2050, the Zoning Map, as to a Specific Parcel, from Urban Standard
Density Residential (R-7) to Urban Standard Density Residential (R-5)
(3600 SW 110th Avenue) (Ordinance No. 4400)

Second Readings:

- 06129 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located at 8111 SW West Slope; CPA 2006-0002/ ZMA 2006-0001 (Ordinance No. 4398)
- 06130 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Four Properties in Northeast Beaverton; CPA 2006-0003/ZMA 2006-0002 (Ordinance No. 4399)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (2) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (2) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 72 hours advance notice. To request these services, please call 503-526-2222/voice TDD.

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
JUNE 19, 2006

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, June 19, 2006, at 6:40 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Bruce Dalrymple and Dennis Doyle. Coun. Cathy Stanton was excused. Also present were Assistant City Attorney Bill Scheiderich, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Public Works Director Gary Brentano, Police Chief David Bishop and City Recorder Sue Nelson.

PRESENTATIONS:

06108 CPA 2006-0001 Amending the Comprehensive Plan Chapters 1 and 2 and the Glossary

Mayor Drake stated this presentation was being postponed to a future meeting.

VISITORS COMMENT PERIOD:

There were none.

COUNCIL ITEMS:

Coun. Bode said she and Coun. Stanton would be attending the Governor's workshop on Homelessness tomorrow in Salem.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Doyle MOVED, SECONDED by Coun. Bode, that the Consent Agenda be approved as follows:

Minutes of the Regular Meeting of June 5, 2006

06109 Liquor License: Change of Ownership - Uptown Market

06110 A Resolution Stating the Official Results of the May 16, 2006 Primary Election
(Resolution No. 3863)

Question called on the motion. Couns. Arnold, Bode, Dalrymple and Doyle voting AYE,
the MOTION CARRIED unanimously. (4:0)

PUBLIC HEARINGS:

06111 A Resolution Adopting a Budget for Fiscal Year Commencing July 1, 2006
(Resolution No. 3864)

Finance Director Patrick O'Claire said the purpose of this public hearing was to adopt the Fiscal Year 2006-2007 Budget and to hear public comments on the uses of the State Revenue Sharing Funds. He said the proposed budget was the same budget considered by the Budget Committee on May 22, 23 and 25, 2006. He said the Budget Committee proposed seven amendments to the budget that were incorporated into the proposed budget now before Council. He said the proposed resolution would adopt the budget, and set the ad valorem tax levy and appropriations for all City's funds.

Coun. Bode noted that all the budget hearings are open to the public and asked O'Claire to give an overview of the budget hearing process for the audience. She said fund accountability in municipalities was much more detailed than accountability in the private sector.

O'Claire explained the process in detail, from preparation through the Budget Committee hearings.

Coun. Bode said some topics caused a fair amount of discussion among the Budget Committee members. She asked O'Claire about the requirements for a balanced budget.

O'Claire confirmed that State law requires that the budget be balanced and that no fund be in deficit. He said if a fund was in deficit, the fund would have to be brought into balance by reducing expenditures to meet the level of revenues or contributions from the General Fund would have to be made to a particular special revenue fund.

Coun. Bode stated the budget process was very transparent; the budget document is available to citizens, all budget hearings are open to the public and the Budget Committee is made up of citizen members and the Council.

O'Claire added that the City also advertises the public hearings in the newspapers; included in that notice is a statement to let citizens know the budget can be found in the Finance Office, the City Recorder's Office and the Library.

Mayor Drake opened the public hearing and asked for testimony.

There was no one present who wished to testify.

Mayor Drake closed the public hearing.

Coun. Bode MOVED, SECONDED by Coun. Doyle, that Council approve Agenda Bill 06111, A Resolution Adopting a Budget for Fiscal Year Commencing July 1, 2006. Couns. Arnold, Bode, Dalrymple and Doyle voting AYE, the MOTION CARRIED unanimously. (4:0)

Coun. Bode thanked the five community members on the Budget Committee for their commitment to this important process.

06112 Regulation of Payday Loan Businesses

Mayor Drake introduced Assistant City Attorney Bill Scheiderich. He said included for the record was a memorandum from Scheiderich to the Chief of Staff, with a recommendation for a slight change to the proposed ordinance. He said information from the payday loan industry was submitted for the record. Also, letters in support of the proposed ordinance were submitted by Rick Bennett, from AARP (American Association of Retired People) and by Laura Etherton, from OSPIRG (Oregon State Public Interest Research Group) a consumer advocacy group.

Assistant City Attorney Bill Scheiderich reviewed the changes to the proposed ordinance. He said at the request of proponents of the ordinance, staff was recommending deletion of Section 7.12.030 (page 3 of ordinance) that would not allow an existing loan to be renewed more than two times. He said State law already requires that payday loans not be renewed more than three times. He said State law was amended to restrict renewals to no more than two times; this would become effective in July 2007. He said for the City to act in advance of the State law would expose the City to legal challenge. He said State law does apply to the City. He said the second change was already included in the draft ordinance before Council; the revision makes the City Council the body that would hear an appeal and make the decision on the appeal. He noted these changes were recommended for the draft ordinance that had not yet received first reading.

Mayor Drake opened the public hearing.

Angela Martin, Our Oregon, Portland, said Our Oregon was a state-wide non-profit economic fairness coalition group. She said they received letters from many of their partners (AARP, Ecumenical Ministries, OSPIRG, etc.) who are concerned about the current consumer credit situation in Oregon. She said the proposed ordinance has been adopted by other cities and is an important first step to ending predatory lending in Oregon. She said the most serious problem of high interest rates could only be addressed by State law and the new cap on interest rates would not go into affect until July 2007. She said the industry has developed a new product to avoid the interest cap and other protections that apply to short-term loans. She said this was why the city ordinances were important. She said all consumers deserve access to fair, responsible and affordable credit. She said in their current form, payday loans do not represent helpful credit. She said these high-cost loans put consumers in a worse financial situation.

Martin said through her work on this issue she met many families who do not have a strong relationship with mainstream financial services. She said these families go to high-cost financial services, like payday loans, to bridge that gap. She said this puts these families in worse situations. She said she met many people who were willing to share their experiences as they worked for State-wide reform. She told some of these stories to the Council. She said passing this ordinance would help these families as they work their way out of debt.

Mayor Drake referred to one of the examples Martin relayed about an individual who started with a \$700 loan that grew to over \$2,000. He asked how long it took for the loan to grow to \$2,000.

Martin said she did not have that information with her but she could get that information to Council.

Mayor Drake said he would appreciate having that information before the next meeting.

Luanne Stoltz, Portland, said she was the Vice President and Government Relations Director of the Community Financial Services Association of Oregon, the industry organization representing the payday loan companies. She said she also owned Any Day Payday Loan Company in Portland. She said many studies on the payday loan industry were done by nationally recognized independent research groups, such as the Federal Reserve Board, the State of Oregon, Georgetown University and Cypress Research. She said the facts from these studies showed that the customers were making informed choices when applying for payday loans; the customers understand the exact cost of the loans, they value the service and they were satisfied with the loans. She said she could provide copies of these studies to anyone who wished to see them.

Stoltz said payday loans do not diminish the consumer's welfare or disadvantage customers. She said the opposite was true. She read a quote from a recent study by Donald Morgan, a senior economist at the Federal Reserve Bank of New York, *"We find no higher levels of debt and no higher rates of delinquency. We are not finding evidence of systematic predation as we defined it."* She said Morgan noted that in the mad rush to restrict payday lenders, few had attempted to determine whether such lending was actually predatory or reduced the well being or welfare of families. She said she distributed the article about the study to the Council. She said everyone would prefer low cost products, but if the State passed a law requiring 2% home loans, it would not result in more loans; it would result in no home loans. She asked the Council to remember that payday loans are unsecured; if the consumer does not repay the loan she would be out the money. She said the vast majority of her customers appreciate the confidence she places in them and repay the loans in a reasonable period of time. She said this issue concerning consumer choice and customers know what the payday loans cost in real dollars. She said customers were free to choose payday loans and manage their finances in a way that best meets their needs.

Stoltz said they agreed the industry should work in a cooperative manner with government to ensure consumers are making informed choices. She said that was why they supported Oregon Department of Consumer and Business Service's (CDBS: the industry regulator) request for additional funding to regulate the industry during the last legislative session. She said that was why they also conduct financial literacy seminars

and support consumer credit counseling. She stressed they support reasonable regulation of the industry. She quoted from the conclusion of the policy review study done by CDBS *"However much participants in and observers of payday lending may regard the rapid growth of this financial service with dismay or revulsion, or dismiss its contribution to consumer indebtedness, a dispassionate review reveals a rational basis for the growth of payday lending and good reasons for the relatively high degree of customer satisfaction with payday lenders revealed in our survey of well over 1,000 payday loan customers."*

Coun. Arnold referred to the statement Stoltz just read and asked from where it originated.

Stoltz replied the statement was from the Oregon Department of Consumer and Business Services (DCBS). She said this was a regulatory department of the State and they audit payday loan businesses annually. She said the DCBS did a comprehensive study of payday loan usage in the state of Oregon and she offered to provide a copy to Council.

Coun. Doyle referred to an earlier statement that the loan default rate was 5% and asked if that was an accurate number.

Stoltz replied the default rate on loans that they never collect was about 5%. She said since the institution of recent regulations the default rate had doubled.

Coun. Doyle asked Stoltz if she testified before the House and Senate on the regulations.

Stoltz said she had testified before the Senate and House and had met with the regulators and legislators.

Coun. Doyle asked what their reaction had been regarding why the bill passed.

Stoltz replied it was characterized as a multiple bargaining chip.

Coun. Bode said she recalled in the loan process that a customer would give the lender a check when they take out a loan.

Stoltz said that was correct; if a customer borrowed \$100, she would give them \$100 in cash and they would give her a check for \$118 dated for their next payday.

Coun. Bode said in reference to defaults, the lender could cash the check right away; if it was secure that they have to be employed.

Stoltz said if the customer had money in their account, they could do that.

Coun. Arnold noted in an article Stoltz provided by an economist it was noted that the postdated check was for an amount 10% higher than the size of the loan. She noted Stoltz was running at almost 20%.

Stoltz said 20% was rare; the typical rate was 15% to 20% of the face value of the loan. She referred to an article she provided regarding the cost of running a payday loan business in Canada (in the record), which is similar to the cost in the United States. She said the cost ranges from \$12 to \$35 depending on the size of the company and whether it is the first loan for a customer or a renewal. She said a small company like hers has high overhead; she said a large company can amortize its costs over a larger group. She said a large company could do a loan for \$12 per \$100. She said it costs her \$16 to do a \$100 loan, so she makes a profit of \$2 for each \$100 loan. She said while her overall default rate was low, her initial default rate was high; 20% of the checks deposited are returned for non-sufficient funds (NSF). She said at that point they start negotiating with customers to setup a payment plan.

Coun. Arnold referred to page 5 of the Canada report and noted there was a 60% limit on the interest rate in Canada; she asked what that referred to.

Stoltz said Canada probably had a usury rate of 60%. She said most states that have a usury rate make an exception for payday loans. She said usury rates were usually for long term loans; payday loans are short-term loans.

Coun. Arnold said the article also stated that because of the high cost of business, it was important to the payday loan industry that consumers keep returning. She said that seemed to conflict with the idea of using the service occasionally to get out of trouble versus using the service frequently.

Stoltz said annually they have to report to the State the number of loans processed, the value of the loans and default rates. She said this year the State started collecting information on return customers; how many people take out 1-5 loans annually, 6-10 and more than ten. She said the numbers from her store indicated that 70% of her customers took out fewer than five loans; 29% took out 6-10 loans; and 1% took out more than ten loans. She said she thought her numbers were typical to other stores. She said the repeat customers only come back a few times a year; usually at Christmas or tax time or when it's needed for back-to-school clothes.

Mayor Drake referred to Stoltz's comment that passage of the bill was a political pawn and asked what that meant to her.

Stoltz said her industry's lobbyists explained it was an exchange for the Jessica law; the Democrats said they would pass the Jessica law if the Republicans would pass the payday loan law. She said she did not know if that was true or not.

Mayor Drake said that was a cynical view of the legislative process from both sides. He asked what her profession was before she owned the payday loan company.

Stoltz said she did not think she was a typical example as she was a teacher at Aloha High School for twenty years. She said her family had been in the financial services business for a long time including collecting agencies and check-cashing stores. She said her sister had four stores.

Mayor Drake said he was surprised to learn there were six payday loan businesses in Beaverton and triple that in the unincorporated area. He said it seemed there had been a huge growth of these businesses in this area over the last two years and he asked why that happened.

Stoltz said it was like any other industry; growth in the industry was good for the consumer because it provides competition. She said competition would drive the prices down to the lowest possible rate in order to compete with the other businesses.

Coun. Arnold said from the article regarding Canada's businesses it sounded like competition lead to larger organizations providing this service. She said if it grew in Oregon to the point where larger organizations would take over Stoltz would be out of business.

Stoltz said in any industry most people feel that consolidation drives mom and pop stores out of business. She noted with the advent of Home Depot, the mom and pop hardware store went out of business and that is probably what will happen in the payday loan industry as well. Stoltz thanked Council for the opportunity to speak.

Rick Lember, Beaverton, said he had been in this industry since 1999. He said he worked for Fastbucks Holding Company based in Dallas, Texas. He said they had 77 stores across nine states including one store in Beaverton. He said he volunteered at the Food Bank and at the Portland Rescue Mission and he gives back to the community. He said he oversees 11 stores in Oregon, employs 33 people and provides medical, dental, vision and 401K benefits to the employees. He said he wished to discuss the myth of excessive interest rates on payday loans. He said the APR (annual percentage rate) is a useful number for comparing automobile and home mortgage loans. He said these loans share two common factors; monthly payments are required and the loans are for more than a year. He said the APR gives the consumer a way to compare the rates offered by the lenders. He said the APR is not useful for short-term loans (a few weeks) where there is only one payment; the APR is not useful if there is no monthly payment.

Lember said in this industry they set fees for loans; to borrow \$100 it would cost between \$15 and \$20. He said the State of Oregon makes a gross profit of 100% at liquor stores, the clothing industry has a 100% markup, and jewelry stores markup is 200%. He said there has been little controversy over these merchants' profits. He said using the APR to compare a payday loan to a car loan was like comparing the cost of traveling one mile by taxi versus airplane.

Lember said in the 1980's the Oregon legislature repealed the limits on interest; they determined money was a commodity and the market would set the price. He said as long as the consumer was informed, it was a reasonable agreement. He said the payday loan industry consistently supported legislation to inform customers; there are over 40 pages of laws that regulate the industry and most of those laws relate to consumer information. He said they do object to the legislation that includes price fixing/interest rate caps. He said a consumer satisfaction survey done by Georgetown University showed that national payday industry customers had one of the highest satisfaction rates of any product offered. He said many of their customers had no other option and the industry grew out of the need to help these customers who have no other

place to go. He said the lender takes the risks. He said there were many reasons the customers use this service and the rates were different with each store.

Coun. Doyle asked what the price-fixing regulations were like in other states.

Lember said it varies in every state; in California the consumer could borrow no more than \$300 and the cost was 15% and other states have different regulations.

Mayor Drake asked if he borrowed \$100, rolled it over twice and then could not pay the loan, would the interest be 521% at the end of the year.

Lember said that was correct.

Nina Hamman, Beaverton, referred to Mayor Drake's previous question and said there was no additional interest charged after three refinances. She said if he borrowed \$100 and rolled it over twice, the charge would be \$45.00 and there would be no additional charges if that was not repaid. She said she was the District Manager for Money Mart and they have one store in Beaverton. She said payday loans were primarily used by the middle-income levels. She said according to Cypress Research Group, and confirmed in previous studies by Georgetown University, over 2/3's of payday loan customers have incomes of over \$25,000; 50% of the borrowers have moderate incomes of \$25,000 to \$50,000. She reviewed the professions of many of their customers. She said the Georgetown University study confirmed that 92% of customers strongly agreed that payday loan companies provide a useful service to consumers.

Hannan reviewed how the industry is currently regulated and said in July 2007 new legislation would eliminate the payday loan industry as it is known today. She said a study done by Ernst & Young on the cost of service shows it is about \$12 per \$100. She said they respect their customers and want them to make decisions that will improve their financial situations; it is of no benefit to the lender to have consumers accumulate debt that they cannot repay. She said they work with their customers to fashion payment plans when they cannot repay their loans. She said current State laws allows their customers to pay down their loans at any time. She said they support having customers make the decision on what amount they can pay on their loans; it is inappropriate for governments to make these decisions for consumers' individual budgets. She urged Council to allow consumers to make their own informed choices.

Mayor Drake asked if he chose to borrow \$100 and rolled it over two or three times, did she say the only cost he would pay was the \$15 to \$20 fee each time. He asked how they reached the 521% interest rate.

Hamman said the loans are based on the consumer's pay schedule so the interest rate varies. If a consumer is paid every two weeks or monthly, the rate would vary from as low as 190% up to 521%. She said it was easier to use the flat rate. She said currently her fee was \$17.50 per \$100 and it is easier for the customer to understand the exact cost of the loan. She said there was no application fee; to get a loan a consumer would need their most recent pay stub, most recent bank statement, a blank check, a valid driver's license and a utility bill. She said it takes about five minutes to get a loan.

Coun. Dalrymple asked if that applied to her particular business and if the other businesses in Beaverton had different processes.

Hamman said that was correct. She said it was a pretty general process and she did not know of any other loan industry where a person could walk out with a loan of up to 25% of their net pay in five minutes. She spoke about a customer she helped with a loan to pay their heating bill.

Mayor Drake said he did not understand where the interest rate starts on these loans.

Hamman said the \$17.50 was basically the interest rate and it varies depending on the time span for the consumer's payday; how many days to the payday. She said if the next payday was less than seven days from the loan origination date they would just go to the next payday as the due date.

Mayor Drake asked if he could not pay the loan over the course of the year, would the high interest rate factor in at that time.

Hamman said State regulations do not allow them to compound or accumulate interest. She said at the time someone defaults, there are no additional fees or interest compounded on top of that. She said what would apply would be the bank overdraft fee and one \$25 return item fee.

Coun. Dalrymple asked if the finance fees and charges were being equated to an interest rate.

Hamman said the \$17.50 fee was being equated as an interest rate.

Coun. Arnold said asked how they decide who will be approved for a loan.

Hamman said they do not discriminate.

Coun. Arnold asked why the customer had to bring in their bank statement.

Hamman said that would show that their account is open and active.

Coun. Bode asked Hamman about her background and if she lived in Beaverton.

Hamman said she worked at Multnomah Falls for over ten years, then she and her husband owned a kids resale store. She said she stayed at home for ten years before she started working at Money Mart, where she started as a customer service representative and was promoted to District Manager. She said she lived in Troutdale.

J. Allen Green, Beaverton, said he was not a payday lender or customer. He said he was a vendor who was acquainted with this industry and its leaders and staff. He said they were people of the highest character and their customers were intelligent people who know what they want and what they are doing when they apply for a payday loan. He said some customers are irresponsible and allow themselves to get into trouble but to lay their trouble at the feet of those who were their only help was unfair. He said he

valued freedom of access and fairness in the marketplace, in society and in government. He reviewed recent efforts of legislators and social service workers to regulate the payday lending industry. He said they were sincere in their efforts to protect the consumer from what they perceive as predatory lenders.

Green questioned where the predatory label originated and said this industry has been regulated by the State for years. He said the nature of the payday loan encourages borrowers to plan ahead and have a high commitment to paying off the loan that is secured by a check written against the borrower's checking account. He said that was an intelligent way to impress upon a borrower with a weak credit history that the loan is to be paid back on a certain date.

Green said the label came from perceived high interest rates. He said that most people do not understand the quirks of APR calculations. He said the APR was useful for long-term loans, but for short-term loans it distorts the picture. He said if he lent a friend \$1.00 for one day and the next day accepted a ten cent fee along with the \$1.00 being paid back, he could be charged with assessing interest at an APR of 3,650%. He said if that \$1.00 was paid back a year from the day it was loaned, with the ten cent fee, the APR would only be 10%. He said it was a flat fee of ten cents, and the longer the period the loan was extended, the lower the APR. He said that was why the APR was not a fair measuring stick for short term loans; payday loans are short-term. He said the fee set for the loans covers operating costs and make a reasonable profit.

Mayor Drake asked him to address the question regarding how the 521% was calculated and the fact that there was no incentive to payback the loan on time if there was no charge after the third rollover.

Green explained that if he charged \$20 to borrow \$100 for a two-week period, there were 26 two-week periods in one year. He said \$20 multiplied by 26 (two-week periods) was \$520. He said that \$520 on a \$100 loan was 521% interest.

Mayor Drake said that was different from earlier testimony that the loan could only be rolled over two or three times, and there was no fee beyond that.

Green explained if a person paid back his loan and the \$20 on time in a two-week period, he would pay 521%.

Mayor Drake asked if the rollovers were limited and the loan was not paid, how would the lenders get their money.

Green said he just learned this company does not charge any more than the fees for the loan. He said that was generous of them and the APR would go down substantially on that loan if it was not paid off for a year. He repeated the longer the loan was extended, the lower the APR.

Mayor Drake asked Green why he was involved with this business and if he was the individual who brought in the petitions that went to the legislature.

Green said he did not bring in any petitions but he submitted information earlier and attended prior Council meetings where this was discussed. He said he wrote an editorial

in The Valley Times that he hoped would clarify the issue. He said he felt bad about the predatory label that has been placed on the industry.

Coun. Bode referred to the scenario of the \$100 loan and \$20 fee and asked if after three rollovers and one NSF fee of \$24 (assuming the check had not cleared), the borrower would owe \$184 in six weeks.

Green said that was correct.

Coun. Bode said then the account would go to collections and that industry usually has a 60/40 contract. She said the lender would only get 60% from collections.

Green agreed and said some people were irresponsible with credit. He said he believed the blessings of freedom far outweigh the possible risks of making a bad choice. He said the low default rates for these loans, was a credit to the ingenuity of this industry because they were dealing with credit-risk customers. He said he would hate to see this industry coming to an end because of over regulation. He said the State legislation would have the greatest impact on the industry, not the City's action.

Coun. Bode said she would give Green an A+ for presentation. She asked him what vendor business he represented.

Green replied he provided an ATM terminal to these businesses, though he had no customers in Beaverton. He said he lived in Beaverton. He said he would like the Council to take the high road and help with consumer education.

There was no further testimony.

Mayor Drake closed the public hearing.

(Note: Council comments on this item occurred later in the meeting during First Reading of the Ordinance)

First Reading:

Coun. Doyle MOVED, SECONDED by Coun. Bode, that the rules be suspended, and that the ordinance embodied in Agenda Bill 06114, be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Arnold, Bode, Dalrymple and Doyle voting AYE, the MOTION CARRIED unanimously. (4:0)

Scheiderich noted the proposed ordinance was amended prior to the first reading by deleting Section 7.12.030 as explained earlier in the public hearing.

Mayor Drake asked if the motion included approval of the proposed changes to the ordinance.

Couns. Doyle and Bode indicated that was their intent.

Scheiderich read the following ordinance for the first time by title only.

06114 An Ordinance Amending Provisions of Chapter Seven of the Beaverton

Contract Review Board - Public Hearing:

06113 Request for Approval of a Contract-Specific Special Procurement

Finance Director Patrick O'Claire explained this public hearing was before the Contract Review Board to allow exemption from the competitive bidding process to do a special procurement to appoint a contractor to do the design work for the Summer Creek Bridge. He said this was allowed by the City's Contracting Rules. He said the contract would be held for seven days following the public hearing to allow testimony to be submitted to the purchasing director. He said if there was no protest after the seven days, the City could award the contract as recommended in Agenda Bill 06113.

Mayor Drake opened the public hearing.

There was no one present who wished to testify.

Mayor Drake closed the public hearing.

Coun. Bode MOVED, SECONDED by Coun. Doyle that the Council acting as the Contract Review Board approve Agenda Bill 06113 and (1) find, based on the information supplied in this agenda bill and its attachments, that under the standards of ORS 279B.085(4) the City is justified in using the alternative contracting method described herein for the purpose of selecting OBEC Consulting Engineers to provide professional engineering services related to the design and inspection of the Summer Creek Bridge; and (2) authorize the City to award a contract to OBEC Consulting Engineers of Eugene, Oregon, for an amount not to exceed \$166,015.00 to provide engineering design and inspection services for the Murray Boulevard Extension Project in a form approved by the City Attorney. Couns. Arnold, Bode, Dalrymple and Doyle voting AYE, the MOTION CARRIED unanimously. (4:0)

Coun. Bode explained for the public that this was a very technical project and involved the construction of a 300-foot bridge over greenspace and wetland areas at Summer Creek. She said this project was under the jurisdiction of the Army Corps of Engineers and involved several agencies including the City. She said the City needed to find a company that had bridge building knowledge and the experience of working with the Army Corps of Engineers. She said this was an extremely interesting project and she looked forward to seeing the bridge when it is completed.

ORDINANCES:

Coun. Doyle referred to the payday loan regulation ordinance that received first reading earlier in the meeting. He said the presenters agreed that with the real problem for this industry in Oregon lies with the bill passed by the State Legislature. He said the City's ordinance refines the process and has an effective date that is one year earlier than the State's implementation date of July 2007.

Coun. Bode asked what the median income was in Beaverton.

O'Claire said he believed it was about \$56,000.

Coun. Bode said she was comparing that to earlier comments that the average income of payday loan customers was between \$20,000 and \$26,000. She said the people who signed the petitions (in the record) were from all over the region.

Coun. Arnold said the regulation of the APR was the crux of the problem and that was under the jurisdiction of the State. She referred to earlier comments that comparing the APR was like comparing the cost of a taxi ride to the cost of a plane ride. She said one had to ask if people were taking taxis without knowing they were in for a plane ride. She said the concern was fairness and consumer awareness. She said she supported the ordinance because she felt it was fair to the citizens of Beaverton.

Coun. Doyle said he was glad Council addressed this issue and he appreciated the speed with which the City Attorney's staff prepared the ordinance. He said he felt it was essential for the Council to take this action.

Coun. Doyle MOVED, SECONDED by Coun. Bode, that the rules be suspended, and that the ordinances embodied in Agenda Bills 06116 and 06117, be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Arnold, Bode, Dalrymple and Doyle voting AYE, the MOTION CARRIED unanimously. (4:0)

First Reading:

Scheiderich read the following ordinances for the first time by title only:

06115 PULLED - To Be Scheduled for Future Meeting: An Ordinance Amending Comprehensive Plan Chapters 1, 2 and the Glossary (Ordinance No. 4187) Related to CPA 2006-0001. (Ordinance No. 4395)

06116 An Ordinance Amending the Comprehensive Plan (Ordinance No. 4187) Land Use Map and the Zoning Map (Ordinance No. 2050) Regarding Three Parcels Identified on Tax Map 2S10600 as Lots 101, 102 and 105. CPA 2005-0006/ZMA 2005-0008; 16655 SW Scholls Ferry Road. (Ordinance No. 4396)

06117 TA 2006-0004 (2006 Omnibus). (Ordinance No. 4397)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 8:25 p.m.

Sue Nelson, City Recorder

APPROVAL:

Approved this day of , 2006.

Rob Drake, Mayor

DRAFT

**BEAVERTON CITY COUNCIL
REGULAR MEETING
JULY 10, 2006**

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, July 10, 2006, at 6:40 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Bruce Dalrymple, Dennis Doyle, and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Public Works Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Police Chief David Bishop, City Recorder Sue Nelson and Deputy City Recorder Catherine Jansen.

VISITOR COMMENT PERIOD: There were none.

COUNCIL ITEMS: There were none.

STAFF ITEMS: There were none.

CONSENT AGENDA:

Coun. Bode MOVED, SECONDED by Coun. Doyle, that the Consent Agenda be approved as follows:

Minutes of the Regular Meeting of June 12, 2006

06118 Liquor License: Change of Ownership - Express Mart

06119 A Resolution Expressing the City of Beaverton's Election to Receive Distribution of a Share of Certain Revenues of the State of Oregon for Fiscal Year 2006-2007, Pursuant to ORS 221.770 (Resolution No. 3865)

06120 Traffic Commission Issue No.: TC 593 - Removal of Two-Hour Parking Limit on SW Second Street Near Lombard Avenue

Contract Review Board:

06121 Waiver of Sealed Bidding - Purchase One Four Wheel Drive Front Loader From the State of Washington Price Agreement

06122 Bid Award - Rental of Construction Related Equipment

06123 Contract Renewal Between Chesshir Architecture P.C. and the City of Beaverton for the Storefront Improvement Program

Coun. Stanton said she had corrections to the minutes that she gave to the City Recorder.

Question called on the motion. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0) Couns. Bode and Doyle abstained from voting on the June 12, 2006 minutes as they were not at that meeting.

Mayor Drake said the ordinances would be considered at this time.

ORDINANCES:

Second Reading:

City Attorney Alan Rappleyea read the following ordinances for the second time by title only:

06114 An Ordinance Amending Provisions of Chapter Seven of the Beaverton City Code Establishing Regulations on Payday Lending. (Ordinance No. 4394)

06116 An Ordinance Amending the Comprehensive Plan (Ordinance No. 4187) Land Use Map and the Zoning Map (Ordinance No. 2050) Regarding Three Parcels Identified on Tax Map 2S10600 as Lots 101, 102 and 105. CPA 2005-0006/ZMA 2005-0008; 16655 SW Scholls Ferry Road. (Ordinance No. 4396)

06117 TA 2006-0004 (2006 Omnibus). (Ordinance No. 4397)

Coun. Doyle MOVED, SECONDED by Coun. Stanton, that the ordinances embodied in Agenda Bills 06114, 06116 and 06117, now pass. Roll call vote. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

PUBLIC HEARINGS:

06124 APP 2006-0004: Appeal of Town Square Too - Wal-Mart Approval (DR 2005-0068)

Community Development Director Joe Grillo read a prepared statement defining the process that needed to be followed for this hearing, including the various required disclosure statements (in the record). He asked if any Councilor had a potential or actual conflict of interest.

No Councilors indicated a conflict of interest.

Grillo asked if any Councilor had an ex parte contact to declare.

Coun. Arnold said her friend, Arlene Garrison, tried to talk to her about Wal-Mart and her concern about traffic. She told her she could not talk about the issue and concluded the conversation.

Coun. Bode said she had six messages on her voicemail that offered their opinion of "No Wal-Mart." In addition, she received a call from an elderly woman named Doris whom she called back and Doris said to "Just say no." She said she did not engage in conversation with her.

Coun. Dalrymple said he had six messages on his voicemail, all seeking a no vote on Wal-Mart. He said he did not return the calls.

Coun. Doyle said he had similar calls and he did not return the calls or engage in conversation with anybody in the community.

Coun. Stanton said she visited the site and had conversations with people about the process. She said she did not speak to anyone about the application and no one gave her anything substantive that she could share with the Council.

Mayor Drake said he had similar contacts but nothing of substance.

Grillo asked if any Councilor wished to declare any site visits.

All the Councilors indicated they either drove by or visited the site.

Grillo asked if any member of the audience wished to challenge the right of any Councilor to participate in this hearing.

Henry Kane, Beaverton, said he wished to challenge Mayor Drake's participation and asked that the Mayor recuse himself from this proceeding for several reasons. (1) Mayor Drake was on record as saying that the zoning for this site was outright. Kane said the zoning was not outright and the Board of Design Review listed 76 conditions that were approved. (2) Some years ago The Oregonian quoted Mayor Drake as saying that the Wal-Mart site and application were an outright permitted use. (3) At the time of the hearing of the Gramor appeal, Mayor Drake stated several times that conditions change. He suggested the Mayor should consider not voting in the event of a tie.

City Attorney Alan Rappleyea said the Mayor only votes in the case of a tie. He said he had not heard anything in Kane's comments that would require Mayor Drake to recuse himself from this matter. He said the comments were simply statements of what the standards were at that time.

Mayor Drake said Coun. Stanton wished to make a request regarding the process for this hearing.

Coun. Stanton, Council President, said the rules for this application were set by Codes and State statutes. She requested that all testimony be to the point and address relevant approval criteria. She stressed the Council cannot consider testimony regarding neighborhood compatibility, property values, economic

impacts, appropriateness of use and Wal-Mart business practices in rendering its decision. She said irrelevant testimony would only reduce the amount of time available for others who wished to testify. She said the Council was the low man on the jurisdictional totem pole; OSHA (Occupational Safety and Health Administration) and other agencies have standards, statutes and codes to oversee their areas of authority. She said the Council does not have that authority. She said everyone has a right to testify and she asked that everyone use their three minutes to convince the Council to do something that it could do legally.

Development Services Manager Steve Sparks introduced Senior Planner John Osterberg and Transportation Engineer Randy Wooley. He said staff from Tualatin Valley Fire and Rescue (TVF&R) and the Oregon Department of Transportation (ODOT) were present to answer Council questions. He said Washington County staff would be available at tomorrow night's meeting. He said he would give a brief project overview and Wooley would review the transportation analysis for this project.

Sparks said this site was annexed to the City on February 11, 2005. He said when this and other sites were annexed in February 2005, they were not rezoned to City zones because: 1) The annexations were in court and it was not known if it would stand up to legal challenge; 2) Ballot Measure 37 (BM 37) had recently passed election and the City had not undertaken a BM 37 comparative analysis of the County zoning and what City zoning could be applied to the sites; and 3) The City was working with the property owner to get Washington County to enter into an intergovernmental agreement (IGA) to allow the County to process the development proposal for this site. He said since the applicant and the property owner had established a working relationship with the County on this site, the City thought it was good practice to allow that relationship to continue. He said the Washington County Board of Commissioners declined to enter into that IGA. He said with these three factors, the Community Development Director and the City Attorney recommended to the Mayor that the City not proceed with rezoning the properties that were annexed in early 2005.

Coun. Stanton asked when the annexations were in court, was the legal challenge to the County to designate zoning or to the annexation.

Sparks replied the challenge was to the annexation.

Sparks said with those factors the applicant had to submit the development proposal to the City. He said Washington County had done a great deal of planning for this area; there was a Cedar Mill-Cedar Hills Community Plan, the Cedar Mill Town Center, the Peterkort Station Area Plan and the Peterkort Master Plan. He said the subject site was not identified as an Area of Special Concern in the Community Plan. He said a key consideration in developing the Peterkort Station Area Plan and the Cedar Mill Town Center Plan was addressing the County's growth allocation for housing and jobs from the Urban Growth Functional Plan - Title 1. He said the County and cities focused their development capacity in the multiple use zones. Beaverton focused its growth in the Regional and Town Centers. He said the County allocated a large number of its housing and job

requirements on the Teufel site and on the area along SW Barnes Road that is controlled by the Peterkort family.

Sparks said after completing the planning study, the County considered what zoning would be appropriate for these areas. He said the County designated the site as the Transit Oriented-Retail Commercial (TO-RC) zone and one of the permitted uses was retail uses greater than 5,000 square feet. He said this was the same zone as the site across the street where Albertson's Market and the Outback Restaurant were located. He said with the annexation, the City would continue to apply the County zoning in terms of use, but the site was subject to the City's procedures, standards and processes. He said that was why the application went to the Board of Design Review and the City's design guidelines were applied to this development. He said the City prepared a crosswalk analysis between the County Code and the City Code that identified those provisions of the City Code that were applicable to this development (in the record). He said the City took a conservative stance and if the County Code had a provision that the City Code did not contain; city staff deemed the County Code was applicable.

Sparks said the BDR heard a great deal of testimony that this use was inconsistent with the transit oriented designation. He said the County Code was clear that this zone allows retail uses greater than 5,000 square feet and it defines retail business. He said staff took the position that the transit oriented designation involved design, not use. He said the County Code has a design review process that is applicable only to uses within the transit oriented zones; whereas the City's design review is applicable to most development. He said the BDR considered the record, weighed the material and evidence presented by all parties, and voted to approve the project. He asked Wooley to review the transportation issues.

Transportation Engineer Randy Wooley said the Transportation Division reviewed the application to see if it complied with the City Code requirements relating to streets and traffic. He said they worked on that task for over a year and had a number of meetings with the applicant to work out issues of concern. He said the traffic report estimates 7,400 new trips per day to this site. He reviewed the roads and streets that service the site (in the record). He said ODOT had jurisdiction for all freeways, freeway ramps and for SW Cedar Hills Boulevard between SW Barnes Road and Butner Road. He said the County had jurisdiction on SW Barnes Road and the remainder of SW Cedar Hills Boulevard. He said the City dealt extensively with the State and County on this project.

Wooley said under the City Code, the Traffic Impact Analysis has to investigate traffic conditions within the Area of Influence; that is the area where the projected traffic from the new development is at least 5% of existing traffic. He said for SW Barnes Road the Area of Influence was from the Sunset Transit Center to Saltzman Road and from Celeste Lane to Butner Road. He said the City had to consider prior decisions by the County's Hearings Officer related to the Peterkort properties. He said those decisions said that the traffic from all of the Peterkort's past and proposed developments had to be considered; if that exceeded 10% additional areas had to be reviewed. He said that included the intersections where the Highway 217 ramps connect with SW Barnes Road.

Wooley said the City Code requires a traffic volume-to-capacity ratio of 0.98 or less. He said a ratio of 0.1 would meet the capacity of the intersection. He said 98% of capacity was congested. He said the Code also requires that the average vehicle delay be 65 seconds or less. He said if the roads already exceeded that criteria the Code would require that development not make the condition worse. He said the developer was not required to go back and correct past errors, but it would require that they not make the traffic congestion any worse than the current condition.

Coun. Stanton asked if the 65-second delay was at an intersection and if it was an LOS (Level of Service) F.

Wooley said it was at an intersection and it was LOS E, which is close to failure. He said the goal is to figure out what mitigation is required, not the traffic numbers. He said there was also a requirement imposed by the U.S. Supreme Court called Rough Proportionality, which states that local jurisdictions can require conditions on development, but they cannot exceed the roughly proportional share; the conditions have to be roughly proportional to their impacts. He said that was why the Code requires that the applicant show they are doing their roughly proportionate share of the long-term needs. He said the City also considered the 1999 Master Plan for the Peterkort properties and its update in 2004. He said the Plan assumed full build-out of all the Peterkort properties and what the traffic requirements would be under that condition. He said that provided a good idea of the long-term needs for the SW Cedar Hills Boulevard/SW Barnes Road intersection.

Wooley said from the traffic analysis a list of needed improvements were developed. He reviewed the improvements in detail (in the record). The major improvements were: 1) Additional lanes on SW Barnes Road and traffic signal improvements at SW Cedar Hills Boulevard/SW Barnes Road to accommodate the Teufel development. He said these improvements have been approved and construction should start next month. He said if Teufel did not build these lanes, Wal-Mart would have to construct the improvements, in addition to its own improvements, because the Wal-Mart traffic analysis was based on those improvements being in place. 2) SW Barnes Road would be widened. 3) A signal would be added at 117th Avenue. 4) Dual turn lanes would be added to the Wal-Mart entrance. 5) A second right turn lane would be added to eastbound SW Cedar Hills Boulevard. 6) Additional lanes on SW Cedar Hills Boulevard, north of SW Barnes Road. 7) Widening of the Highway 217 ramp to provide an additional westbound lane and extend the northbound right turn lane. 8) A signal would be added to the eastbound off ramp from Highway 26 at SW Cedar Hills Boulevard; this signal would be coordinated with the signal at the Butner Road/SW Cedar Hills Boulevard intersection.

Coun. Arnold asked when the improvements needed to be done.

Wooley said the improvements would have to be completed before occupancy. He said there were design issues yet to be resolved before the site development permit is approved and construction can start. He said the northbound right turn lane on SW Cedar Hills Boulevard at Butner Road would be extended to the

freeway ramp, so traffic can use that lane as a through lane to the freeway; that would improve capacity.

Wooley said during the BDR hearings, there was concern about pedestrian access. He said pedestrian refuge islands would be constructed at the SW Cedar Hills Boulevard/SW Barnes Road intersection to shorten pedestrian crossings. He said all the signals would be pedestrian countdown signals. He said during the hearings concern was expressed that this development would use up all the capacity of this intersection and future development could not provide additional capacity. He said the Peterkort Master Plan indicated that when the Peterkort property is built out, there would be the potential to add more capacity to this intersection. He said this would occur by adding more turn lanes; the median would become left turn lanes so all approaches would have dual left turn lanes and a right turn lane. He said the ability to do that would come from the Peterkort properties as they would be developed.

Coun. Stanton asked if Wal-Mart were to build the Teufel improvements, when the Teufel development built its 501st unit, would Teufel then reimburse Wal-Mart and would there be additional improvements.

Wooley said the improvements at SW Cedar Hills Boulevard and SW Barnes Road would have to be in place before Wal-Mart could be open for business. He said funding was between Wal-Mart and Teufel. He said Teufel did not have any additional improvements on these two roads; however, there were improvements on other locations that Teufel would have to construct.

Coun. Stanton asked if the requirements for the Peterkort property would be in addition to these improvements for future development.

Wooley said that was correct. He said there were no new Peterkort applications currently before the City. He continued with his report stating that during the BDR hearing there was debate regarding the number of lanes at the SW Cedar Hills Boulevard and SW Barnes Road intersection. He said there were eight lanes and two bike lanes. He said when people referred to this as a ten-lane intersection, they were including the bike lanes. He said there were questions on how long it would take a pedestrian to cross the intersection. He said the average time for crossing an intersection was 21 seconds. He said the SW Cedar Hills Boulevard/SW Barnes Road intersection was larger than the average intersection and he thought additional time could be added to the countdown timer; this would need to be discussed with Washington County as they have jurisdiction over this signal.

Coun. Arnold asked if this was relevant to what was currently being considered.

Wooley said it pertained to the question if the intersection provided an adequate solution for pedestrians. He said the City, Washington County and ODOT concluded that it could.

Wooley said concern was expressed at the BDR hearing about long-term needs; after this development, if future capacity was needed where would it come from.

He said the Peterkort Master Plan provides reassurance that additional capacity is available as he reviewed earlier.

Wooley said there was a question at the hearing regarding how many ambulance trips were made to St. Vincent's Hospital on a daily basis. He said from July 1, 2005 through yesterday, Metro West Ambulance reported they had 12,168 ambulance transports to the hospital; 9,558 of those were Code 3 (emergency, running with lights and siren). He said that calculated to 25 trips per day. He said the route they usually follow was to use the freeway to Baltic Avenue which takes them up to the Emergency Room entrance; they seldom use SW Cedar Hills Boulevard and SW Barnes Road, especially with a Code 3. He concluded that: the proposed mitigation would slightly improve traffic operations at the SW Cedar Hills Boulevard/SW Barnes Road intersection, especially for southbound traffic; pedestrians and bicyclists would still be able to use the intersection; there is a way to address long-term needs; the application as submitted meets the Development Code requirements; and the promised mitigation is guaranteed by the conditions approved by the BDR. He said the transportation requirements were satisfied. He said Washington County has requested the addition of one more condition to the development approval; that as lanes are added to SW Barnes Road, a sign bridge be added to hang signs that direct traffic into the right lanes. He said if the Council agrees to that, staff would write appropriate language to add that condition.

Coun. Stanton said 9,558 Code 3 ambulance trips per year equaled 25 per day.

Wooley clarified Metro West Ambulance's preferred route was to use the highway to Baltic Avenue to the Emergency entrance to St. Vincent's. (Coun. Bode asked for this clarification).

Sparks said that concluded staff's presentation.

Coun. Dalrymple referred to the TO-RC zone and asked what Washington County's original intent was in its long-term planning. He asked if the County had envisioned box stores or groups of stores. He noted the proposed store was much larger than 5,000 square feet.

Sparks said City staff asked the County's planning staff if the City was interpreting the County Code correctly in terms of procedures and what uses were allowed. He said the County responded that the City was applying the County Code correctly. He said in terms of what the County's intent was when the Code was changed; that conversation did not occur.

Coun. Dalrymple asked if staff could ask the County that question.

Sparks said staff could ask that question but he was not sure if that was applicable since the County Code states that uses greater than 5,000 square feet are allowed.

Coun. Dalrymple said he was asking because of the citizen participation and how that zone was allowed. He said there could be other permitted uses that were not

on the list. He said he wanted to be sure on the distinction that it could be anything greater than 5,000 square feet.

Coun. Bode asked the footprint size of the shopping center opposite this site.

Sparks said staff could get that information.

Coun. Stanton asked if the new dedicated eastbound right-turn lane from SW Barnes Road to SW Cedar Hills Boulevard would be a permitted right turn or would it be restricted as it is currently.

Wooley said both lanes would be controlled by a separate signal; it would overlap, so that the right turn could go while the left turns were going. He said unless the County signed it as "No Turn on Red;" right turns could still be made on a red light.

Coun. Arnold read from page 15 of the staff report regarding City standards prevailing over County standards and that the City's zoning provisions would apply even if the County's standards were more restrictive. She said she thought that meant that in the County Code there was a section that dealt with transit oriented development and that the City Code would supersede that, even if the County Code was more restrictive. She asked if the City was making the standards more lax and said that was one of the opponent's arguments against the development.

Sparks said both the County Code Design Principles and City Code Design Guidelines were applicable to this project. He said the City's and County's Design Standards were not applicable to this project. He said under the City Code this project was a Design Review 3 which makes the Design Guidelines the applicable provisions. He said under the County Code it is a Type 2 process and is subject to either the Design Standards or the Design Principles. He said staff looked at the Design Principles (County) and Design Guidelines (City). He said for staff to say the City's standards were less or more stringent than the County was a subjective call, since the discussion was about principles and not quantifiable standards.

Coun. Stanton asked for his subjective view as a planner.

Sparks said he was not prepared to give his view at this time. He said it was staff's position in looking at the crosswalk analysis and the Code that they are equivalent.

Coun. Arnold read from page 116 of the staff report "The overall impression, particularly on class 1 Major Pedestrian Routes, should be that architecture is the predominant design element over parking areas and landscaping." She asked what a Class 1 Major Pedestrian Route was and if SW Cedar Hills Boulevard fell under that category.

Sparks said a Class 1 Major Pedestrian Route was a City designation that staff applied to the City's Multiple Use zoning areas to help determine what design guidelines and standards would apply in those areas. He said the City had not gone through a zoning map analysis and amendment process for this area. He said when that process occurs, route classifications would be considered. He said

as part of the zoning map analysis they would consider the Community Plan for guidance in designating a major pedestrian route. He said they would look at the Community Plan and County zoning to help determine what City zone would be the most comparable to the County zone.

Coun. Arnold asked if the Code Section 60.05.35.6A was applicable to this project.

Sparks said it was not applicable since the road had not been designated as a Class 1 Major Pedestrian Route.

Coun. Arnold asked if there was something similar in Washington County. She said the entire area would be densely populated when fully developed and they were discussing making this area pedestrian friendly by using the County's transit oriented district. She asked if this was applicable or was the County Code a valid concern to this application.

Sparks said he would have to get back to her with an answer, as he would need to see how it was identified in the crosswalk between the County and City Codes.

Coun. Arnold asked if the traffic volumes were understated in the Trip Generation Manual.

Wooley replied ODOT raised the same concern regarding the Trip General Manual. He said the Transpo Group (applicant's traffic engineer) did a study using a larger number and concluded it did not change the mitigation requirements. He said they did not go back and redo the whole study.

Coun. Arnold said that Wal-Mart would be off the Highway 26 intersection, and there was no other store like this in the area, which suggests that the traffic might be higher than the averages seen in the data sample on this map. She asked if there was another way to look at that.

Wooley replied he was not aware of any other data and there wasn't anything else in the record that could provide more guidance.

Coun. Doyle referred to previous comments regarding future development increasing the demands on this area. He asked what it would take to move the traffic and keep it below failure.

Wooley said the remaining large vacant parcels were the Peterkort and Teufel Nursery properties. He said development on the Teufel project was already factored into this development. He said the Peterkort development would provide additional left and right turn lanes at SW Cedar Hills Boulevard and SW Barnes Road to handle the additional traffic.

Mayor Drake said traditionally the Transportation Planning Rule (TPR) requires a building to front onto the roadway. He asked why Wal-Mart was setback from SW Cedar Hills Boulevard and the major view from SW Cedar Hills Boulevard was the parking lot. He said most of the recent developments in the City have conformed to the TPR and questioned why this was different.

Sparks said that portion of SW Cedar Hills Boulevard, south of SW Barnes Road, is in ODOT jurisdiction and ODOT designated it as a freeway on-ramp to Highway 26. He said it was not a road that would have vehicular access to the site from SW Cedar Hills Boulevard. He said initially ODOT did not want any pedestrian activity on the west side of SW Cedar Hills Boulevard; that included no sidewalks. He said since that time, the City, County and ODOT had additional conversations about this issue and have now concluded that pedestrian activity would be allowed on that side. He said one of the improvements that Wal-Mart would help fund was construction of a pedestrian under-crossing on the Cedar Hills ramp to continue the pedestrian movement south on SW Cedar Hills Boulevard. He said SW Barnes Road was the main front road for vehicular access and pedestrian activity to the site.

Mayor Drake said he thought the pedestrian under-crossing was doable but he was concerned for safety reasons. He said many jurisdictions no longer had passageways under streets for safety reasons.

Mayor Drake asked if a Target store would generate similar traffic as a Wal-Mart store.

Wooley said based on the Trip Generation Manual, a Target store would fall under the same category as a Wal-Mart and if they were the same size they would have a similar amount of traffic.

Mayor Drake referred to future potential growth for the area north of Cornell Road and for St. Vincent's hospital when Phase II is developed. He expressed concern regarding the impact on this intersection; with the SW Cedar Hills Boulevard extension to Cornell Road that bottleneck would get worse. He said he was concerned that if Wal-Mart was approved, during peak times the traffic would backup that far and there was no outlet north. He asked how traffic to the north would be addressed.

Wooley said he would defer to Washington County as they were more familiar with that issue. He said the Code did not require review of that issue for this project, so staff did not review it in detail. He said during the BDR hearings, they learned that Don Odermott, traffic engineer for the Peterkort family, was a wealth of historical information and he was present if Council had any questions. He said they also learned that the impact of St. Vincent's traffic on the SW Cedar Hills Boulevard/SW Barnes Road intersection was small. He said most of St. Vincent's traffic used the interchanges at Highway 217 and many of the hospital's commuters use transit.

Coun. Stanton referred to page 2,832 of the staff report, where it stated that Criterion 3 was not met due to the lack of a Clean Water Services provider letter. She asked if Clean Water Services amended its provider letter. She also asked why there was no site exit onto southbound SW Cedar Hills Boulevard.

Wooley said ODOT considers that section of SW Cedar Hills Boulevard to be part of the on-ramp for Highway 26 and does not allow access to an on-ramp.

Coun. Stanton asked if there was any conversation with ODOT about reviewing this particular site and changing their position.

Wooley said TVF&R wanted emergency access to SW Cedar Hills Boulevard and ODOT said its standards did not allow them that flexibility.

Coun. Stanton asked if anyone sent a letter to ODOT asking them to waive the standard for this application.

Wooley said the access was not pursued after the response was received on TVF&R's request for emergency access. He said it seemed clear they would not get anywhere with any request for access onto the ramp.

Coun. Stanton referred to page 2,832, Criterion 4, which stated that proposed access and subsequent modification of the SW Choban Lane driveway to SW Barnes Road could "feasibly" be provided to the site and the Choban property. She said she needed additional assurance that the City had gone beyond "feasible" as that made her nervous. She also asked for the feasible probability.

Wooley said when the initial staff report was written the City had no assurance that the Chobans were in agreement on this plan. He said subsequently the City did get a letter stating they were in agreement.

Coun. Stanton said the term feasible referred to access.

Senior Planner John Osterberg said that was a finding in the staff report and feasible meant the access could fit and be provided. He said this was covered by Condition No. 61 that required that access be provided prior to issuance of a permit.

Osterberg said the Clean Water Services provider letter was Exhibit 3.8 on page 608 of the record, dated May 9, 2006. He said it related to the revised storm drainage feasibility study for the applicant and the City's acceptance.

RECESS: Mayor Drake called for a brief recess at 8:15 p.m.

RECONVENED: Mayor Drake reconvened the meeting at 8:30 p.m.

APPLICANT:

Greg Hathaway, Davis Wright Tremaine LLP, Portland, attorney representing Wal-Mart, said this application was highly scrutinized by the City, ODOT and County staff, and the BDR. He said the result of this review was that City staff determined that the applicant satisfied all applicable requirements, and County and ODOT staff determined that this application satisfied all of the County's and State's transportation standards. He said the BDR also determined that all the standards applicable to this application were satisfied with the conditions the Board proposed.

Hathaway said the BDR took its job very seriously and asked many of the questions Council just asked. He reviewed the key issues that were decided by the BDR. He said the BDR determined that the proposed use was permitted by right in the TO-RC zone. He said the BDR also acknowledged that the County's Comprehensive Plan, when it created transit oriented districts, specifically recognized that if a retail use was beyond one-quarter of a mile from the Light Rail Station, there could be large box retail. He said regarding the question of the County's intent when it formed the TO-RC District, Ordinance 483 provides that retail uses that market primarily to an area larger than the station community may be allowed in the TO-RC District, if located at least one-quarter mile from the Light Rail Station. He said when the TO-RC District was adopted, the County Comprehensive Plan recognized this use and that was a significant statement of intent by the County.

Hathaway said the third significant action of the BDR dealt with transportation. He said the BDR accepted the unbiased and expert conclusions of the City's, County's and ODOT's transportation staff. He said it was not easy for the applicant to meet the stringent standards of all three agencies; the agencies concluded that the applicant met all the standards and the BDR accepted the agencies' conclusions. He said the applicant did a comparison with the Wood Village Wal-Mart and it was determined that the traffic generated by the Wood Village Wal-Mart was less than the traffic used in the ITE (Institute of Transportation Engineers) Trip General Manual (in the record).

Hathaway said another key issue in the BDR hearing was the improvements at the SW Cedar Hills Boulevard/SW Barnes Road intersection. He said the focus was on what Wal-Mart was doing to create these improvements and the potential congestion these improvements could create. He said Wal-Mart's proposed improvements were consistent with the transportation planning that has occurred in this area for the last ten years. He said they were not creating anything different from what has been planned for a decade. He said this project would generate less traffic on this site than was assumed as part of the Peterkort Transportation Master Plan.

Hathaway said the architectural design for this building was substantial and this project raised the architectural bar for commercial retail in the city. He said the BDR ensured with its conditions of approval that this center was pedestrian friendly. He said the most important action by the BDR was that it rejected all of the opponents' arguments. He said the BDR did not change its position regarding transportation issues after the expert testimony from Mr. Bernstein, the transportation engineer for the opponents. He said none of the staff from the City, County or ODOT changed their positions after the expert testimony from the opponents' group. He said Council would hear the same arguments at this hearing. He asked that the Council affirm the BDR's decision and said the applicant was prepared to comply with all the conditions imposed by the BDR. He said it was important for Wal-Mart to be in this community and stressed they complied with all the requirements.

Scott Jackson, Perkowitz & Ruth Architects, Portland, applicant's architect, presented a PowerPoint presentation on the site plan for the proposed project and

the architectural design features (in the record). Major features of the design included: Site layout for the store and companion buildings; Ground-level parking under the store; Screening of the parking lot on SW Barnes Road; Five plaza areas including the main entrance; Variety of building forms and scales; Variety of paving materials; Raised planters and variety of landscaping; Vehicle and bicycle parking; and Access to the building.

Coun. Stanton asked if the office building on the northwest corner of the lot was a stand-alone building and where the parking for that building was located.

Jackson said it was an attached building and they would share Wal-Mart's parking area under the store. He clarified this parking area was at grade, under the building and the parking would be open and spacious. He said all the buildings were at grade and the main Wal-Mart store was above the parking lot. He said the store would be at ground level and there was access through stairs, escalators and elevators.

Coun. Bode referred to the site plan and said it looked like there was a sidewalk that would run into the Highway 26 ramp. She said she thought ODOT had not permitted pedestrian access on that ramp.

Sparks said the original proposal indicated no pedestrian access. He said over time, through negotiations with ODOT and Washington County, the pedestrian sidewalk was proposed and agreed upon by ODOT and the County.

Coun. Stanton said if ODOT agreed to the sidewalk, why couldn't there be a dedicated right-turn lane out of the parking lot for westbound Highway 26.

Sparks said they did make that request of ODOT and ODOT's regulations were clear. He added there were representatives from ODOT present at the meeting.

Coun. Stanton asked that someone from ODOT address that issue during the hearing.

Jackson clarified that the sidewalk continues from the ramp up to the corner of SW Cedar Hills Boulevard and SW Barnes Road.

Coun. Stanton asked how much pedestrian movement there was on SW Cedar Hills Boulevard.

Hathaway said there was hardly any pedestrian traffic at that location.

Coun. Dalrymple referred to the site drawings and noted that the planting material looked fairly mature. He asked if the trees that were planted would have a caliper size consistent with what was shown on the drawings.

Jackson said the drawings show the plant material at 15 years maturity.

Coun. Bode asked what size the plants would be when planted.

Shawn Parson, PacLand Landscape Architect, Seattle, Washington, said at the time of planting the trees would be larger than the standard specification. He said they would get the largest type tree they could get in nursery stock, which is usually three-inch caliper. He said for shrubs they would get five-gallon container size, which is usually between 18-24 inches in height and width.

Coun. Dalrymple said the trees in the drawings looked like they were 15-20 feet high. He asked what the height of a three-inch caliper tree was in comparison to what was shown on the drawings.

Parson said depending on the species, a three-inch caliper tree would be between 15 and 18 feet tall. He said the trees in the drawing were 20-25 feet in height. He said he thought the majority of the trees would be near or more than 15 feet at the time of planting. He said they would use ample supplied material.

Coun. Arnold asked Jackson to review the store entrance locations along SW Barnes Road.

Jackson reviewed the entrances for Retail Building No. 2 (in the record). He said all the tenant spaces would have access on the SW Barnes Road side and on the south side for easy access from the parking lot. He reviewed the entrances for the plaza areas, for Wal-Mart, for the parking under the store and for the office building off of SW Barnes Road (in the record).

Coun. Arnold asked if there were other entrances to Wal-Mart other than the main door.

Jackson said there was an entrance in the garden center area. He said everything for operational purposes and for the retail store would come through one central area for security reasons and checking out. He said the garden center was a duplicate area.

Coun. Arnold asked the size of the retail building.

Jackson said the retail building was 9200 square feet and it could be divided into as many as eight stores, though it would probably be four to six stores. He reviewed the northern entrances to the retail building and said it would have glass frontage.

Coun. Stanton asked where the Tri-Met bus stop was located.

Dan Boultinghouse, PE, PacLand, Portland, said the Tri-Met stop was currently west of 117th Avenue. He said they were currently talking to Tri-Met regarding another stop. He said Tri-Met reviewed and approved the proposed site.

Coun. Arnold said one of the concerns expressed was that pedestrian activity would not happen and that the doors on the northern side of the retail building would not be used because the tenants would not want to maintain two entrances.

Jackson said it would be up to the tenants to layout their own stores.

Coun. Arnold asked if that meant they did not have to install the doors (on the north side).

Boultinghouse replied that the Code required doors on the north side and they have to remain serviceable.

Coun. Arnold asked if the doors could become emergency exits only.

Sparks said there was no County or City Code requirement that says the doors have to be open.

Jackson said it was their assumption in doing the design that the doors would be operational.

Coun. Arnold referred to the transportation number and said she felt that the traffic volumes for this site could be determined from the stores sales records and projections.

Bruce Haldors, President, Transpo Group, Kirkland, WA, applicant's transportation engineer, said he has done Wal-Mart retail studies for 15 years and the main question on every project was how many trips would the store generate and how are they generated. He said this industry relies primarily on the ITE Trip Generation Manual which is a compilation of traffic studies of stores. He said the free-standing discount store figures in the Manual were from Target and Wal-Mart stores. He said every site was unique and to determine trip generation they look at community size, access, housing density, roadway widths, etc. He said in this application they had the data from the Manual as well as the data collected by a traffic engineer representing the opponents of the Hillsboro Wal-Mart store. He said this data was collected from the Wood Village Wal-Mart and they identified a trip rate that was lower than the Trip Generation Manual's trip rate. He said to be conservative and work from a worst case basis, for this project he did a sensitivity analysis that used a trip rate that was 50% higher than the trip rate documented at the Wood Village store. He said as part of that analysis they looked at the traffic impacts to see if that would change the mitigation and impact of this proposed store. He said the answer to that was no; he said that no answer was validated by the City's, County's and ODOT's traffic engineers. He stressed that they have done studies of their stores throughout the West Coast and validated these traffic numbers, and the ITE Trip Generation Manual was comprised of those studies.

Coun. Arnold asked if they had a sales estimate, and the average purchasing amount per customer, why doesn't that give them a more exact number for trip generations.

Hathaway said the standard that was used was the ITE Trip Generation Manual. He said that was the best objective standard. He said in this case the City, County and ODOT required that the applicant do a sensitivity analysis to validate the Manual to make sure it was the best standard. He said the three transportation agencies define the rules of the game and that was the standard that was used and the applicant complied with that standard.

Coun. Arnold asked if her calculation to determine trip generation (i.e., projected sales divided by average sale per customer equals the number of customers per day) was not valid because Wal-Mart did not estimate correctly. She asked why that would not be mathematically correct.

Mayor Drake suggested that the team get together after this meeting to look at her question and develop a response.

Coun. Stanton asked how people would access the parking lot.

Jackson said everyone has to park under the building.

Mayor Drake asked what the peak hour was for this project and how many additional vehicles there would be per hour.

Haldors said their analysis was focused on the evening commuter peak hour from 4:00 p.m. to 6:00 p.m. He said the analysis focused on the peak 15 minutes of the peak hour traffic. He said he would need to find the numbers in the record.

Mayor Drake said it would be interesting to know the figures for the bell curve of the top six hours.

Haldors said the record did not include a 24-hour traffic profile for the store. He said he could provide that if Council wished.

Coun. Stanton said she would like to see that.

Coun. Bode asked if the Wood Village Wal-Mart has a grocery store.

Haldors said when it was developed it did not have a grocery, but it now does.

Coun. Bode said a Wal-Mart without a grocery store would have a different trip generation rate than one with a grocery store. She said this proposed Wal-Mart did not have a grocery store so this project could not be compared with the Wood Village store.

Haldors said they used the trip generation numbers for the Wood Village store before the grocery section was added.

Coun. Stanton said she assumed the Wal-Mart store would be built first but when would the other buildings be constructed.

Jackson said all the buildings would be built at the same time.

Coun. Stanton said she agreed with Coun. Arnold that eventually all the front doors on the Retail 2 Building would face the parking lot and not SW Barnes Road. She asked if there was anything in the conditions to prevent that. She said she was talking about visual design that identifies the front of the building facing the parking lot.

Jackson said their intent was to focus on the pedestrian way. He said there was a movement in the Metro regional area to have retail businesses front on pedestrian sidewalks. He said it was a conundrum from a retailer's point of view.

Coun. Dalrymple asked about the signage program for the Retail 2 Building. Jackson said the signage would face SW Barnes Road as shown on the elevation drawings. He said the signage program would comply with the City standards.

Coun. Arnold asked what he meant by a sign program.

Jackson said a sign program defines how much signage can be located on a building. He said this was guided by the City's Sign Code.

Sparks said signage on the north side was not required by the Code but a retailer rejecting signage was unheard of.

APPELLANT:

Jeffrey Kleinman, Portland, attorney representing the appellant Save Cedar Mill (SCM), presented Council an Appeal Memorandum of Save Cedar Mill, Inc., dated July 10, 2006. He said this memorandum contains a list of proposed findings of denial. He introduced Robert Bernstein, the SCM traffic engineer and Tom Armstrong, the SCM planner. He said they would address the appeal points raised by SCM.

Kleinman said in an article from the July 9, 2006 The Oregonian, the Community Development Director Joe Grillo was quoted as saying this appeal was too late and they should have appealed the County's zoning. He said this property was zoned Transit Oriented-Retail Commercial (TO-RC) in the County and that zoning was applied by the City. He said the County's design standards and principles were integrated into this zoning and they were not comparable to City standards. He said Wal-Mart's application violates standards. He said Armstrong would cover these violations. He said the June 29, 2006 staff memorandum states that design issues are the subject of City and County design principles and guidelines and are "highly discretionary and subject to varied opinions by decision makers."

Robert Bernstein, Seattle, WA, transportation engineer for the appellant, said common sense and technical analysis indicates that the proposed development and intersection widening do not improve existing conditions, do not accommodate the proposed development and make conditions worse for pedestrians, bicyclists and transit. He said the applicant's technical analysis indicates that even with this extensive mitigation, the Cedar Mill street system will be on the brink of failure. He said there were various key traffic movements that exceed capacity; the northbound left turn from SW Cedar Hills Boulevard onto SW Barnes Road was over capacity and in the applicant's calculations queues backup to upstream intersections. He said they believe the conditions would be much worse and they identified a series of errors, omissions and assumptions in the applicant's analysis, that were detailed in the BDR hearing testimony over the last several months. He said correction or revision of these items would result in the failure to meet City

standards analytically. He said the finding that the street system functions adequately was an analytical house of cards that would fall. He said regardless of what numbers are used, the system would never work as well as the analysis indicates; particularly in cases where there are double left and right turns.

Bernstein said the proposed mitigation measures would make the situation worse not better. He said the widened SW Cedar Hills Boulevard/SW Barnes Road intersection would not work for vehicular traffic and was a permanent "show-stopper" for pedestrian or bicycle traffic. He said to cross SW Barnes Road on the west side of SW Cedar Hills Boulevard, pedestrians would have to cross eight lanes of traffic and two bike lanes; a total of 106 feet of exposure to traffic. He said to cross SW Cedar Hills Boulevard, south of SW Barnes Road, one would have to cross ten lanes of traffic and two bike lanes; a total of 130 feet of exposure to traffic. He compared that to an average wide intersection of 70 to 80 feet. He said he did not know of any intersection that had such a large pedestrian crossing area. He said regardless of refuge islands and extra crossing time, there was no way this intersection could be considered safe and convenient for pedestrians. He said the eastbound and southbound movement would have to be signalized No Turns on Red. He said pedestrians would avoid this intersection and the intersection would be "poison" to any walking community. He said the conclusion that the widened intersection meets standards and would be safe and convenient for pedestrians defies common sense and was analytically incorrect.

Tom Armstrong, Winterbrook Planning, Portland, planner for appellant, showed three drawings to illustrate the lack of pedestrian and transit orientation in the proposed design (in the record). He said two errors were made in determining the applicable criteria for this application. He said the crosswalk analysis done by City staff was flawed. He said the transit oriented design principles in the County Code Chapter 431, that implements the TO-RC zoning, was what should be applied to the project. He said it was not comparable and it was not superseded by the City design guidelines. He said the City's original crosswalk compared the City's guidelines to the County's guidelines. He said the County guidelines were advisory statements only; the applicable criteria under a County application were the principles and standards. He said there was no comparison or analysis between the County design principles and standards, and the City design guidelines. He said there was one reference to one of the standards, saying it was applicable, but they never provide findings to state how the proposed design is applicable. He stressed the County transit oriented design principles in Chapter 431 was the benchmark against which this project should be measured.

Armstrong said the second error was that SW Cedar Hills Boulevard was a street not a freeway and it is not an ODOT facility. He said the letter from ODOT in the record states ODOT does not have jurisdiction over SW Cedar Hills Boulevard. He said SW Cedar Hills Boulevard was an arterial; none of the approach roads to Highway 26 are classified freeways, they are arterials. He said this was important because within the County's transit oriented design guidelines there is a "pedestrian street" designation. He said the County defines a pedestrian street as any street within the transit oriented district, except for parking alleys and freeways. He said that definition was not dependent on jurisdiction or access. He said common sense says that freeways do not have sidewalks. He said SW

Cedar Hills Boulevard is a street; it has sidewalks and an underpass. He said when those two items are considered in conjunction, and when you look at the required corrective action and apply the County standards, the design fails on each of the three major street frontages.

Armstrong said the view from SW Cedar Hills Boulevard would be an expansive parking lot; the County standards and Transportation Planning Rule require that at least 50% of the building street frontage be built to the sidewalk. He said in addition the buildings are to have habitable, usable space with activity areas and ground floor windows. He said regarding the SW Barnes Road frontage, the applicant just testified that for the Retail 2 Building they would defer judgment to the tenant. He said the applicant controls the tenants, but the applicant is not willing to make promises to make the pedestrian sidewalk become a reality.

Armstrong said his written testimony (in the record) focused on the design flaws of the Wal-Mart building. He said there was no major entrance; the major entrance to Wal-Mart is 80 feet off of SW Barnes Road across the parking lot. He said the other shops next to Wal-Mart were too small and there was no activity on the street; the pedestrian plaza is dead space as there is no reason for anyone to use that space; and the main tower is an architectural feature not a functional space. He said the County standards require that habitable space be predominant; not parking garages or blank walls. He said ground floor windows along that frontage need to look into active uses. He said on the public access street side, the road is too long; it extends beyond the entrance to SW Choban Lane. He said this violates the County block link standard; this was a super block. He said the Cedar Mill Community Plan had an interim access that was eliminated. He said there was a way to organize this site so that it is broken into smaller manageable blocks and provides pedestrian circulation throughout the site. He reiterated that the staff report has stated there is a high degree of discretion in this review. He said the Council has the power to exercise that discretion and deny this application based on design reasons.

Coun. Stanton referred to the property on the north side of SW Barnes Road and asked if it was transit oriented retail and if the Albertson's store was included in that designation.

Armstrong said it was transit oriented-residential. He said he thought Albertsons was transit oriented.

Coun. Stanton asked if Armstrong's comments regarding design flaws and County transit-oriented standards were correct, why would the County allow a big box development that is auto-dependent. She said Wal-Mart met all of the County's design standards. She asked how he could refer to transit friendly when Tri-Met was not near that site. She said pedestrian friendly might be fine in 20 years when the entire area is developed, but she did her own pedestrian survey for two hours one day and there was no one walking in that area. She asked why there was an intensity to create a pedestrian-friendly area where there are no pedestrians.

Armstrong responded there currently were no pedestrians because the area was only half built out. He said this development would be there for 50 years. He said

the Teufel and Peterkort properties would develop in the future. He said the Cedar Mill Town Center was on one end and the Sunset Transit Center was on the other, all along SW Barnes Road. He asked why would the City sell itself short by saying there was no one there now, so it does not need to be addressed. He said the people are coming and the vacant land that surrounds this area would be developed under the transit-oriented zoning with a high density. He said the more a pedestrian orientation is encouraged, the more people will want to walk to the shops. He said if this is closed off, it will force people into cars.

Coun. Stanton asked how there could be design flaws on these three streets if Wal-Mart has met the design criteria as stated by staff.

Armstrong responded the applicant had not met the design standards. He said staff did not apply the County design principles. He said staff applied the City design guidelines and stated that some design guidelines were not met. He said he was talking about the County's pedestrian-oriented design standards; what the building looks like and how it relates to the street. He said these standards have to be applied to the project and staff's position was they had not. He said that was the flaw in the process.

Bernstein said regarding pedestrian circulation/transit access, the point they have tried to make throughout the process is that if this is designed this way, pedestrian activity cannot be encouraged, so pedestrians would not come. He said if they have to cross ten lanes of traffic to get to a bus stop, they would not take the bus. He said there would be ten lanes to cross because of this development and because of the double right turn lane, a bus stop cannot be located close to this site. He said it all points in the same direction; this design kills any opportunity available to make this area acceptable and attractive for pedestrians and transit.

Coun. Stanton said regardless of Wal-Mart, these lanes would still come with the Teufel and Peterkort development. She said Teufel would have to construct more lanes once they reached their 501st unit.

Kleinman said that was not necessarily correct. He said certain lanes were required of the Teufel development. He said there was no specific legal mandate for the remainder of the additional lanes and turn lanes. He said this was being triggered by Wal-Mart in this particular application. He said he was not aware of any requirement attached to future Peterkort development that would require this configuration of the intersection.

Coun. Stanton asked Wooley if Wal-Mart was doing any additional traffic improvements that were not required of Teufel.

Wooley replied yes; Wal-Mart was adding a right-turn lane from SW Barnes Road to SW Cedar Hills Boulevard and extending some of the turn lanes required for Teufel.

Armstrong said the second right turn lane from SW Barnes Road to southbound SW Cedar Hills Boulevard was huge. He said because of that lane there would be no transit stop near that intersection; the stop would be across the street. He said

due to the conflict with the double-right turn lanes, Tri-Met would not put a bus stop there. He said the second right turn lane increases the crossing distance so that pedestrians cross in two steps by using the pedestrian refuge and going through a second light. He said this lane impacts the pedestrian environment of the intersection and corner.

Coun. Arnold noted that the appellant stated that the transit oriented design criteria from the County and City are different, but staff's position is that the standards match up. She said there was no real cross reference in the record and she did not hear any testimony that clearly explained the difference between the County and City standards. She asked when the appellant states that Code 431 was not met, what standard did the City use and why doesn't that meet Code 431.

Armstrong said in the initial staff review, they compared guidelines to guidelines, without considering that the County's guidelines are only advisory statements to be considered in the building design.

Coun. Arnold said she did not think the City compared guidelines to guidelines and she thought this was a terminology issue. She said the City had guidelines that were above standards. She said if you do a Type 2 application and meet the standards you are done; if you do a Type 3 application to go through design review for a higher density and yet meet the standards, then there are guidelines. She said in the City there are guidelines for Type 3; the County has principles, which are the same thing as the City's guidelines, and there are standards under the principles. She said they all sound similar and she thought it should be simple to compare them and determine whether or not they match.

Mayor Drake suggested that staff would provide the answer tomorrow.

Armstrong said that in the County and City guidelines, what is applicable in the transit oriented-retail commercial district is important. He said the City guidelines apply city-wide and the guidelines that apply to the mixed use districts are the ones that apply to the major pedestrian routes. He said the City has said that its hands are tied; the City has not designated any routes in this area, so it cannot apply those guidelines. He said the standards that should be applied in the City's station areas and regional centers are the major pedestrian route standards. He said in the City's opinion these are not applicable. He said that is why the appellant is saying the City guidelines are more generic, apply city-wide and are not comparable. He said the focus should be on transit oriented development design principles and standards. He said the other issue is that the County principles and standards do apply. He said under the County guidelines this is a Type 2 design review so they would start with the standards; if they are not able to meet the standards, then the higher principles would apply.

Coun. Dalrymple asked Bernstein for help in understanding why he felt he was right. He said if they are looking at an increased traffic count of 50% more, where did the applicant go wrong and how was the appellant right.

Bernstein said he was right as he was not focused on one scenario. He said he started with Transpo's traffic analysis and looked at all the assumptions, factors, estimates and the background information. He said he found eight to ten areas

where he felt the report was either wrong, off or could have reasonably used a different assumption. He said when his findings are taken into consideration along with Transpo's results, it shows the system is on the brink of failure. He said there was a list of issues and one or more would "bring down the house of cards."

Bernstein said some of the issues that could cause system failure were: how the intersections operate close together; having more traffic coming from Highway 26 than was estimated; having a Subway store that generates 30 times the number of trips per square foot than specialty retail; the double left turn lane cannot carry the number of cars that the analysis assumes; future development that brings more traffic after 2007. He said every assumption and estimate in the applicant's analysis would have to be "spot-on" for the system to barely work as the applicant has shown. He stressed there were many ways for the system to fail.

Coun. Dalrymple asked Bernstein if every transportation study he did was spot-on.

Bernstein replied it was not but that was his point. He said in all transportation studies there is a large margin of error; it is not an exact science. He said when a study says the traffic is close to the limit, but has not failed yet, at that point you have to look at the range of possibilities. He said the chances that it would be close to the limit and not fail are very slim. He said if the analysis had shown that there was a great deal of capacity available, he would not be here testifying. He said he was here because these figures were on the edge; even if the analysis was correct what would happen in 2007 when new developments come in bringing more traffic.

Coun. Dalrymple said the record indicates the level of service would function better after the improvements are made.

Bernstein said some movements would improve and some would not. He said when considering all the factors he questioned the conclusion.

Mayor Drake said realistically this intersection was a monster with many competing interests. He said retail boutique shops on this site would not be successful for a number of economic reasons. He said if this site were developed with a store whose size was between a Wal-Mart and boutique shops, the intersection would still look like what was being projected today.

Bernstein said he was correct. He said in this case there are conflicting traffic standards and aspirations that probably cannot be met. He said the conflicting standards are that lanes need to be added to meet traffic volumes and the transit center was trying to accommodate transit; you cannot build that many lanes and accommodate a transit/pedestrian environment. He said a choice would have to be made. He said in the Cornell area, Washington County made the decision to build it as they wanted and traffic would have to deal with it. He said this was basically the Council's decision. He asked if the Council wanted this many lanes knowing it would be over crowded anyway or ratchet it back to give transit and pedestrians a chance.

Coun. Dalrymple said with all the development that was coming this intersection would be improved. He asked Bernstein if his solution was to not build anything or develop something less. He asked what he saw happening to allow development to occur.

Bernstein said he was not in a position to comment. He said in many cases there would be no solution; there is a dilemma regarding what the Council wants the City to be given but you cannot have everything. He said this intersection is overloaded and would get worse; the proposed layout makes it a poison pill for pedestrians and transit.

Coun. Dalrymple noted the Peterkorts have a great deal of property yet to be developed and he did not think the City or County would tell them they could not develop it. He said there has to be a solution even if it is not the best solution.

Bernstein replied that was what the Council would have to decide.

Coun. Stanton said the City would have to decide on this site but the area north of SW Barnes Road was in Washington County. She said this site was not in the heart of the City; it was on the far north end of SW Cedar Hills Boulevard. She said it was difficult for the City to have a vision for a project that another jurisdiction developed and another jurisdiction would continue to develop.

Mayor Drake said the Peterkort Master Plan had been in existence for quite a while and that vision was already in place.

Kleinman said this site was never included in any master plan. He said the only place this site appeared with any assumed land use was in the traffic study, where a big box retail was placed on the site for traffic generation assumptions. He said all of the County master plans designated this site as "Not a Part of This Plan." He said in response to Coun. Dalrymple's question regarding a solution, he did not think it was a good solution to take the last available capacity and use it for this single development leaving none for the development of the other Peterkort properties. He said this was an egregious non-solution.

Coun. Arnold asked Kleinman if he was referring to road capacity.

Kleinman replied that was correct.

Coun. Arnold said in the transit oriented district street blocks are to be urban sized. She asked what urban sized was and what in the City Code was comparable.

Bernstein said the County principle was that street blocks should be more urban scale than suburban scale. He said the County sets a limit of 330 feet; the downtown Portland street blocks are 200 feet, which were very small. He said it was fair to look to the standards to guide the interpretation of the principles, and the standard was 330 feet. He said the north access on this site was over 600 feet.

Coun. Arnold asked if the City had comparable standards.

Sparks replied the City did have comparable standards. He said staff could come back to Council with a written response. He said the standards depend on the street classification.

Mayor Drake asked Wooley if he had said this parcel under the 1999 Peterkort study could generate up to 7900 trips daily and Wal-Mart was projected at 7400.

Wooley said that was correct; the 1999 study assumed 114,000 square feet of retail and two large restaurants on this site for an estimated trip generation of 7900 trips per day.

Mayor Drake asked Kleinman or Bernstein to comment on that study and that Wal-Mart's traffic estimate was less than what was shown on the projection.

Bernstein said the previous comment that all the capacity was used up was based on the analysis done for this proposal. He said the capacity is used up by the traffic from Wal-Mart, from the out buildings, and from existing traffic. He said if this is considered with the fact that the system is at the brink, and with the proposed improvements, this intersection is at the edge for capacity. He said the only thing that could be done would be to try not to make it any worse or build an overpass. He said that was their point.

Coun. Stanton said Metro allows LOS F on the arterials everywhere in this region during the peak hours. She suggested he have this conversation with Metro.

Bernstein said this was being discussed because the City did not have a LOS F standard. He said this project did not meet the City's standards and he was asking the Council to look at the real-world aspects, not just the computations. He asked what this intersection would be like in December, 2007 when computed capacity is used up. He said access to the northern neighborhoods and to Wal-Mart would be totally clogged.

Coun. Bode asked Bernstein to explain his statement that Wal-Mart would build a project that would clog up the street system so consumers could not get to their store.

Bernstein said what would be more likely to happen was that traffic would use other routes and neighborhood streets to get to and from the store.

Coun. Bode said she has to listen based on facts and honest projected data versus innuendo. She said she does not believe the world's largest retailer would build a store that no one would come to because they were causing their own traffic jam.

Bernstein said he would withdraw that statement. He said what he was saying was that computationally and realistically that intersection was already full, would get worse with the addition of Wal-Mart; it would get worse for pedestrians, bicyclists and transit as all the improvements are basically for the automobiles.

Coun. Arnold agreed that Council has to make its decision based on fact. She said she would love to see a matrix that shows what is in the County transit oriented district, what the City used instead, and the arguments on why they are or are not the same. She said that would give her a better idea of what she is reviewing. She said the issue is design.

Kleinman responded that the analysis she is requesting is set out in Armstrong's memo that is Exhibit D to the packet they distributed at this meeting (in the record). He said regarding the design standards, when the County allowed large retail to locate within this district, it did not make it easy because it adopted guidelines, standards and principles that are thresholds that have to be met. He said you do not get a pass just because you are a large retail use.

Coun. Arnold said she looked forward to reviewing the material submitted at the meeting by both sides.

Kleinman asked that the record be held open for seven days for written testimony.

Coun. Arnold asked staff how long it would take to put the information she requested together.

Sparks replied they would try to have that available for the hearing tomorrow.

Coun. Doyle asked if there was anything more Bernstein would like to add regarding super blocks.

Bernstein said these were issues raised at the BDR hearing. He referred to the access road that T-s into SW Choban Avenue and loops around 177th Avenue, everything ends as one huge block. He said the backside of SW Cedar Hills Boulevard was a parking lot. If the City applied the block standards from the transit oriented district and the TPR, a street could be pulled through and connections could be made.

Coun. Stanton explained for the audience that the Council previously agreed that LOS F was not acceptable in Beaverton and later approved LOS D which is much better.

Mayor Drake thanked everyone for their presentations.

RECESS: Mayor Drake called for a brief recess at 10:30 p.m.

RECONVENED: Mayor Drake reconvened the meeting at 10:49 p.m.

Mayor Drake said the Council may have further questions and he knew Councilors had questions for the Peterkort's Transportation Engineer Mr. Odermott. He said at the meeting tomorrow night he would give each side the opportunity to answer Council questions. He said he would limit the testimony to 15 minutes each.

Kleinman said he objected to giving 15 minutes to a party because the Peterkorts were essentially co-applicants and could have participated with Wal-Mart in the presentation.

Mayor Drake said there were some questions about history; he was not offering 15 minutes for each side to do another presentation. He said he would keep a lid on open-ended questions, but would allow 15 minutes for each side if the Council has questions. He confirmed that the Council was comfortable with this procedure.

Group Testimony:

Lorraine Clarno, President, Beaverton Area Chamber of Commerce, Beaverton, representing the Chamber Board of Directors, said the Chamber supports the Wal-Mart application. She said the Chamber represents over 720 members and supports economic growth, job growth and consumer choice. She said the BDR decision demonstrated that Wal-Mart successfully met all development standards. She said Wal-Mart provides Beaverton citizens the opportunities for jobs and consumer choice. She said while Wal-Mart would increase traffic, it had met all necessary traffic mitigation requirements to ensure the most effective roads in and out of this area. She submitted written testimony for the record.

Kevin Hohnbaum, Chair, Chamber of Commerce Business Advocacy Group, said the Chamber supports businesses. He said small business can benefit from the additional traffic and customers who would shop at Wal-Mart. He said the Chamber would proactively seek ways to help small businesses identify niches to thrive from Wal-Mart's presence. He said they appreciated the residents' concerns regarding additional traffic and road congestion; however this parcel has been designated a large transit oriented retail commercial site by County and local jurisdictions. He said if not Wal-Mart there would be another big box retailer. He thanked Council for its time.

Darla King, Chair, Central Beaverton Neighborhood Association Committee, introduced Ron Popkin.

Ron Popkin, Portland, 97225, said he has lived in this area for 37 years and has served on committees and on the BDR. He said when he served on the BDR, the Board considered Sexton Mountain development. He said the application looked like it met all the criteria, yet the BDR felt something was wrong with the project and decided that it was not compatible with the area and turned it down. He said the Comprehensive Plan states that new design should enhance the livability and respect the character of existing areas. He said this project and the intersection do neither. He said the Comprehensive Plan states that if an area has an established, desirable characteristic, it should be maintained; infill is to be compatible including size and scale. He said this project fails to meet the Comprehensive Plan test. He said he was a retired civil engineer and engineers were often guilty of solving a problem, but failing to look at the results of their solution. He said when you hear that the additional turn lanes may not function as they are supposed to that needs further investigation. He urged the Council, in the face of all the conflicting information, to call a temporary halt to this project. He said the New Jersey Turnpike with 12 million people was 12 lanes. He said the

City was looking at ten lanes. He asked if the Council wanted an intersection the size of the Turnpike in Beaverton. He said his answer would be no.

Coun. Arnold explained that the Council cannot decide to not make a decision.

Coun. Stanton said the City was under the State's 120-day rule and the deadline was the day after the scheduled date for decision. She said she did not think Wal-Mart would extend the 120 days; and if the Council does not make a decision, Wal-Mart could do whatever it wanted on that site.

Popkin said he could not believe there was no way for elected officials to say this was not the right development for this area. He said if that was the case decision making was going to the technocrats.

Mayor Drake pointed out that previously Wal-Mart voluntarily waived the 120 days to 240 days.

Bruce Bartlett, Chair, Citizen Participation Organization 1 (CPO 1), said CPO 1 passed a motion that detailed five issues it felt were applicable to this case; he said testimony was turned in to the BDR previously and the letter has not changed since then. He said the first issue was increased use of neighborhood routes by cut-through traffic. He said the impact to the town center would be debated; the larger the store the more it loses the personal scale. He said there was concern that the mix of different scales would clash. He said those two issues would occur no matter what happens on that site. He said the Wal-Mart store generated interest in CPO 1 activity unlike anything he had previously experienced. He said hundreds of new people attended the CPO 1 meetings and they were concerned about the impact of the store. He said the greatest impact of the store was the size of the intersection; having the largest intersection in Oregon was not enviable. He said he could not offer a solution and the question would come down to the ultimate capacity of the intersection once all the improvements are built. He asked if full capacity was reached, how would future needs be accommodated as land north of Highway 26 is developed. He said regarding zoning there were many nuances in the County and City Codes. He said he thought the two lined up well, but the devil was in the details. He said he was not sure he would want to walk to this site. He said this project would create the worst-case traffic scenario that he could envision.

Martin Jensvold, Region Access Management Engineer, ODOT Region 1, said SW Cedar Hills Boulevard, between SW Barnes Road and Butner Road, was under ODOT jurisdiction. He said access is controlled by Oregon Administrative Rules (OAR) 734, Division 51, which states that ODOT cannot accept an application for access to a freeway ramp. He said ODOT considers the frontage on west side SW Cedar Hills Boulevard, between SW Barnes Road and the westbound on-ramp, to be part of that ramp; any access to that section of SW Cedar Hills Boulevard is prohibited. He said this issue came up when the Tualatin Valley Fire & Rescue District (TVF&R), wanted emergency access onto that section of SW Cedar Hills Boulevard. He said because of Division 51 that was not allowed. He said ODOT met with the City, County and TVF&R, and agreed on an alternative access off of SW Barnes Road and secondary accesses off the main access road

and SW Choban Lane. He said regarding the pedestrian connections from the early stages of the proposed development ODOT expressed concern about the pedestrian sidewalk on the two-lane free-flowing on-ramp onto Highway 26. He said that was the main objection to providing a sidewalk on SW Cedar Hills Boulevard that would be built to that point and ended. He said they met with the City, County and developer and developed a plan to try to get funding for a pedestrian under-crossing. He said the sidewalk would continue from SW Barnes Road, along SW Cedar Hills Boulevard, underneath Highway 26, and connect to the existing sidewalk at Butner Road.

Coun. Dalrymple noted the ramp design was for two-lane free-flowing access onto Highway 26. He asked why it was designed this way, and if there was another option that would provide the opportunity to do something else on SW Cedar Hills Boulevard. He asked if ODOT had to have the whole street face.

Jensvold said ODOT considered a number of options but due to the proximity of SW Barnes Road and the dual turn lanes, and because there is a lot of jockeying of traffic, this design offered the best protection for SW Cedar Hills Boulevard to prevent traffic queues and backups. He said the best way to keep traffic flowing smoothly was to minimize conflict by giving drivers an option of which lane to move into. He said one reason for providing three lanes on the south section was to ensure lane balance on the dual left and right turn lanes by directing the outside left turn lane into the outside lane of SW Cedar Hills Boulevard.

Coun. Dalrymple asked if having the traffic signal close to where the sidewalk would start created some other opportunity versus having no light and having speed limits instead.

Jensvold said the signal at the westbound ramp terminals would tend to backup traffic and potentially block access onto the westbound on-ramp. He said there were no pedestrian crossings at the westbound off-ramp; pedestrian access was only on the on-ramp through the under-crossing.

Coun. Dalrymple asked if the signal light controlled the two free-flowing lanes.

Jensvold replied it did not.

Coun. Doyle asked if the two free-flowing lanes would be metered before entering Highway 26.

Jensvold said the meter was already installed further down the ramp.

Coun. Doyle asked if backups were anticipated.

Jensvold said that would have occurred if they had signalized the ramp for the pedestrian crossing.

Coun. Arnold asked if they were talking about metering the entrance to freeway.

Jensvold confirmed that was what they were discussing.

Coun. Arnold said earlier there was discussion about conflicting merging traffic from eastbound and westbound SW Barnes Road. She asked if there were issues with that.

Jensvold said that was why it was anticipated there would be no right turns on red from eastbound SW Barnes Road onto SW Cedar Hills Boulevard with this design but right turns on red were currently allowed.

Coun. Arnold said there was earlier discussion regarding construction of an under-crossing. She asked if people were currently crossing there.

Jensvold said the main issue was residential development on the south side of the freeway and commercial development on the north. He said it would be good to enable people to walk from the residential area to the retail area. He said by providing the pedestrian under-crossing, traffic flow could be maintained without pedestrian conflict. He said the City and/or County would apply for a grant through ODOT to pay for the under-crossing and Wal-Mart would pay a portion of the cost. He said a conceptual design of the under-crossing was provided by the applicant.

Coun. Stanton referred to OAR 734, Division 51, and asked if anyone ever received a waiver on access control. She said she was looking at having a right-turn-only lane out of the parking lot onto westbound Highway 26.

Jensvold said that he was not aware of any waiver. He said the rule was established in 2000; prior to 2000 developments were not subject to this rule.

Coun. Doyle asked if there was an intersection similar to this one in Region 1.

Jensvold said a similar intersection was Oregon 213 at Beaver Creek Road in Oregon City. He said that project included dual left turn lanes and separate right turn lanes on all but one approach, and there were two through lanes in each direction. He said that was the closest to this design.

Coun. Doyle asked if this design was of any concern to ODOT.

Jensvold said he understood why the additional lanes were needed. He said ODOT pushed for the island on the eastbound right turn lane and on the southern east quadrant to help minimize the crossing distance for pedestrians. He said some improvements were at ODOT's recommendation.

Coun. Stanton agreed the Oregon 213/Beaver Creek Road intersection was large. She asked what the zoning is for that area.

Jensvold said he was not familiar with the zoning for that area. He said that section of Oregon City was one of the major growth areas anticipated for that area and that was why the intersection was so large. He said based on recent studies there were indications it may not be enough.

Dawn Bonder, representative for Citizen Participation Organization 7 (CPO 7), Portland, thanked the Council for recognizing CPO 7 as a group with an interest in this matter. She said CPO 7 represents the residents of Rock Creek, Bethany, West Union, Baseline and Five Oaks Neighborhoods. She said these areas span the City of Beaverton and unincorporated Washington County. She said the intersection of SW Barnes Road and SW Cedar Hills Boulevard was the gateway to northwest Washington County. She said the residents of CPO 7 must pass through this intersection or the Highway 26/Highway 217 intersection in order to reach their homes and jobs. She said traffic congestion was already grueling and that was before completion of the north Bethany expansion that would add 15,000 residents to the area. She said the Regional Transportation Plan (RTP) was overdue for an update and the traffic generated by north Bethany and Bonny Slope had not yet been included in the RTP. She said in the next year this area would see tremendous population growth and asked that the City view this intersection as a regional resource. She asked that Council look at this decision in the context of how approval would affect the region's ability to manage project growth in all other aspects of the infrastructure planning.

Bonder said the approval of Wal-Mart necessitates the creation of the biggest intersection in the state. She asked what would happen when one million people move into this area in the next 20 years. She asked how the traffic and other unintended consequences from this project would be handled. She said CPO 7 was requesting that the Council take a big-picture view and look at the impacts this application would have on the entire region's infrastructure. She said Washington County was a crucial economic engine in the state and the City needs to protect the region's ability to meet future transportation and infrastructure needs of the businesses and residents. She said this project would hamstring the City's ability to work with the County, Metro and State to continue to offer citizens and businesses the opportunity to thrive. She asked that the Council not approve any proposal that would use all the available traffic capacity to meet the needs of one development.

Jim Crawford, a Director on the Home Association of Cedar Hills (HACH), Portland, said he was an architect and land use planner. He said the HACH represents 2,114 homes located between Center Street and Highway 26. He said HACH opposed any big box retailer in this area. He said this area was zoned transit oriented-retail center and this was a land use issue regarding uses that do not support transit or pedestrians. He said in 1996 the Council denied a Wal-Mart project on Tualatin Valley Highway. He said that project was three-fourths of a mile from the Light Rail Station and one-half mile outside the transit overlay district. He said the land use issues and conclusions made by the Council for that application were applicable to this project. He said as part of the 1996 appeal, Tri-Met stated that the proposed commercial development was not consistent with the goals and development plans of affected State, regional and local jurisdictions because it would establish an auto-oriented commercial center that serves a regional market in a transit land use area. He said the record also stated that "The proposed store was close enough to reinforce the transit supportive land use plans developing around the Light Rail Station. The proposed auto-oriented regional commercial center would not reinforce the transit supportive land use in the transit overlay district." He said in this case Wal-Mart claimed that because they were

more than one quarter mile from the Sunset Transit Station, they were not required to comply with County Code 375, that limits development to those that generate a relatively high percentage of trips serviceable by transit. He said what they failed to acknowledge was that there were four primary bus routes running adjacent to their site on SW Cedar Hills Boulevard and SW Barnes Road. He said staff was wrong to not require the transit commercial district standards be met. He noted Coun. Soth said on the record in the 1996 appeal hearing, that "He has seen very few transit riders pack home a bathtub, cartons of diapers, 24-roll packages of toilet paper or a lawn mower on a train or bus."

Crawford said Wal-Mart is not transit supported. He said in reviewing the 1996 Wal-Mart application, Jack Orchard (Wal-Mart's attorney) said that large scale uses belong away from congested areas. He said he agreed with that comment and asked why Wal-Mart was now proposing a store for the most congested intersection in the City. He said at the conclusion of the 1996 hearing, the Council record provided a finding that the development of an auto-oriented commercial center was not consistent with the 2040 Growth Concept and would then prevent the development of land uses to support a transit system. He said the record also concluded that the Council finds that the proposed commercial use was not consistent with the goals and development plans of affected State, regional and local jurisdictions. He said these findings were true for the proposed store in Cedar Mill. He said the Council should be consistent with its previous decision to deny a big box retailer in a transit-oriented zone. He added that Mayor Drake signed the 1996 order.

INDIVIDUAL TESTIMONY:

Ty Wyman, Dunn Carney LLP, Portland, attorney representing Providence Health Systems of Oregon, the owner/operator of the St. Vincent's Medical Center, said he wanted to be clear regarding St. Vincent's Medical Center's position on this project. He said he appreciated staff's comment regarding the 12,000 emergency medical vehicles visiting St. Vincent's over the past year. He said last year the St. Vincent's Emergency Room (ER) saw 78,000 patients; of that, 66,000 patients went to the ER in their own vehicles. He said the Center was concerned for those patients. He said emergency vehicles are equipped to get through congested traffic; the average citizen is not and they have to wait through all the lights. He said their concern was maintaining traffic flow on SW Barnes Road for people trying to get to the hospital; he said that did not include the thousands trying to get to the Center just to see their doctor. He said the traffic study attached to the application showed extensive improvements to the SW Barnes Road/ Highway 217 intersection. He said there was some back-pedaling on those improvements and their concern was that this intersection had not been adequately mitigated through this process. He asked that the Council ask the applicant to do what it originally committed to earlier in the initial traffic study.

Walt Gorman, Portland, 97229, said he was a participant during the Town Center and the Main Street design phase from 1994 to 1997. He said 1700 people were involved in seven meetings, with never less than 220 people per meeting. He said the Town Center design had two overlays; the Town Center overlay for this parcel and the Main Street overlay. He read from the Cedar Mill Town Center Plan, June

30, 1997, prepared by Washington County Land Use and Transportation: "The study area for the Town Center Plan focuses around Cornell Road, specifically between Murray Road and Saltzman, residential neighborhoods within a quarter mile north and south of Cornell. The Town Center area of influence is bounded by 143rd on the west, Cedar Hills Boulevard on the east, Highway 26 on the south, and Burton Road on the north." He said this showed this parcel was in the Town Center area of influence. He said Metro Town Center and Metro Main Street Plans were overlays that are to be considered part of the land use process. He said the Metro Main Street handbook addresses these core areas of Town Centers and Main Streets and lists prohibited uses on Main Streets; that include uses that are low density, require a large parking lot, dominate a large portion of the main street frontage or large warehouse retailers. He said this was the original intent of what this area was going to be. He said these were important issues that were not being addressed.

Coun. Dalrymple asked Gorman if he was saying that the use of large box use retailers was not to be allowed within the area of influence.

Gorman replied that was correct.

Coun. Dalrymple asked staff whether or not this was considered.

Sparks said this was submitted to the BDR by Gorman. He said staff looked at the Cedar Mill/Cedar Hills Community Plan and the County Development Code. He said the items that Gorman referred to were not in those plans.

Coun. Dalrymple asked Sparks for information about the areas of influence and how that fit into the review process.

Sparks said staff would need to return with that information to Council.

Gorman said the purpose for those hearings was to allow citizen involvement. He said the citizens of Cedar Mill were involved and were part of this plan. He said the County would not say it was not part of the plan or not in the Code. He said the County would assume that the Town Center and Main Street overlays were always part of the plan. He said these overlays were shown in the Cedar Mill Town Center Plan published by Washington County on June 30, 1997.

Coun. Stanton said this was Exhibit 2.25, page 431 in the record. She said areas of influence were not discussed in the Town Center Plan that was part of the record. She asked if there was another document.

Mayor Drake asked Gorman to send his information to Sparks.

Coun. Arnold said she read somewhere that this was an area of influence. She said this area was not part of the Town Center, it is not part of the transit station area; it is in the Cedar Mill Plan as an area of influence but what does area of influence mean. She asked Gorman to elaborate on what she read regarding protecting the Town Center from destruction.

Gorman said it takes a long time and a lot of community resources to build a Town Center area with small retail shops. He said putting in big box development breaks up or blocks the area from developing as a Town Center.

Coun. Arnold asked the role envisioned for the area of influence.

Gorman said the area of influence would eventually be connected to the Town Center. He said that area's development should be considered part of the Town Center and not detrimental to the Center. He said it would not be good to put a lot of investment into the Town Center and then have it not work. He said they were trying to do some difficult processes in developing the entire Metro region. He said Regional and Town Centers are important and if it gets more difficult to get there, the area is no longer a Town Center.

Jason Stevens, Portland, 97225, said he lived in the area to the northeast of the intersection next to the new Peterkort development. He said his neighborhood consisted of three blocks and in that neighborhood there are 22 kids under the age of ten, two of which are his. He said they were all pedestrians and he noted the stores that they visit. He said crossing SW Barnes Road was already bad and was getting worse. He said his children cross SW Cedar Hills Boulevard to get to KinderCare and it was very hard to get there on foot. He said this environment makes it difficult for children to reach the places they want to go. He said it was ironic that the road revisions are called improvements because once installed it gets harder to cross the street. He said it seemed silly to him to have to use his car just to cross the street. He urged the Council to think about the pedestrians. He said these streets are like walls that are keeping people in their cars.

Mayor Drake noted they had reached the agreed time to adjourn and asked for a motion to continue the hearing until tomorrow.

Coun. Stanton MOVED, SECONDED by Coun. Dalrymple, that Council continue this appeal hearing APP 2006-0004 to July 11, 2006, at 6:30 p.m. Couns. Arnold, Bode, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 12:02 a.m.

Sue Nelson, City Recorder

APPROVAL:

Approved this day of , 2006.

Rob Drake, Mayor

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: LIQUOR LICENSES

FOR AGENDA OF: 08/07/06 **BILL NO:** 06133

CHANGE OF OWNERSHIP

Albertson's #559
8155 SW Hall
Beaverton, OR

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: Police

DATE SUBMITTED: 07/18/06

Albertson's #582
11070-C SW Barnes Rd.
Portland, OR

NEW OUTLET

Qdoba Mexican Grill
4655 SW Griffith Dr.

PROCEEDING: Consent Agenda

EXHIBITS: None

BUDGET IMPACT

EXPENDITURE REQUIRED \$ 0	AMOUNT BUDGETED \$ 0	APPROPRIATION REQUIRED \$ 0
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HISTORICAL PERSPECTIVE:

Background investigations have been completed and the Chief of Police finds that the applicants meet the standards and criteria as set forth in B.C. 5.02.240. The City has published in a newspaper of general circulation a notice specifying the liquor license requests.

INFORMATION FOR CONSIDERATION:

Albertson's #559, formerly licensed by the OLCC to Albertsons, Inc., is undergoing a change of ownership. New Albertson's Inc., has made application for an Off-Premises sales license under the same trade name of Albertson's #559. The establishment is a grocery store. It operates Monday through Sunday from 6:00 a.m. to 12:00 a.m. There is no entertainment offered. An Off-Premises Sales License allows the sale of malt beverages, wine, and cider to go in sealed containers.

Albertson's #582, formerly licensed by the OLCC to Albertsons, Inc., is undergoing a change of ownership. New Albertson's Inc., has made application for an Off-Premises sales license under the same trade name of Albertson's #582. The establishment is a grocery store. It operates Monday through Sunday from 6:00 a.m. to 12:00 a.m. There is no entertainment offered. An Off-Premises Sales License allows the sale of malt beverages, wine, and cider to go in sealed containers.

QMEXBeav, LLC is applying for a Full On-Premises Liquor License for a new establishment named Qdoba Mexican Grill. The establishment will serve Mexican food. It will operate Monday through Thursday from 11:00 a.m. to 9:00 a.m. and Friday and Saturday from 11:00 a.m. to 10:00 p.m. There will be no entertainment offered. A Full On-Premises Sales License allows the sale of distilled spirits, malt beverages, wine and cider for consumption at the licensed business.

RECOMMENDED ACTION:

The Chief of Police for the City of Beaverton recommends City Council approval of the OLCC licenses.

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Boards and Commissions Appointment –
Jason Hitzert, Beaverton Arts Commission

FOR AGENDA OF: 08-07-06 **BILL NO:** 06134

Mayor's Approval:



DEPARTMENT OF ORIGIN: Mayor's
Office/Neighborhood Program

DATE SUBMITTED: 07-21-06

CLEARANCES:

PROCEEDING: CONSENT AGENDA

EXHIBITS: Application for new appointment

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED\$0	BUDGETED\$0	REQUIRED \$0

HISTORICAL PERSPECTIVE:

There is currently a vacancy on the Beaverton Arts Commission. Mayor Rob Drake is forwarding Jason Hitzert's application with the recommendation that he be appointed to fill the vacancy. Mr. Hitzert's term is effective immediately and will expire on December 31, 2007.

RECOMMENDED ACTION:

Confirm recommended appointment to the Beaverton Arts Commission.

Community Database
Web Application Request Detail Listing
Application # 39


Status: <input type="text" value="Processed"/>		
Choice #1: <input type="text" value="Beaverton Arts Commission"/>		
Choice #2: <input type="text" value="Library Advisory Board"/>		
First Name: <input type="text" value="Jason"/>	Last: <input type="text" value="Hitzert"/>	Customer #: <input type="text"/>
Street: <input type="text"/>		Home Phone: <input type="text"/>
City: <input type="text" value="Beaverton"/>	Work Phone: <input type="text"/>	Extension: <input type="text"/>
State: <input type="text" value="OR"/>	Zip: <input type="text" value="97005"/>	E-Mail: <input type="text"/>
City Resident: <input checked="" type="checkbox"/>		How Long: <input type="text" value="Part-time for the past year, full time sin"/>
<input checked="" type="checkbox"/> Keep Name on List (if not appointed)		Employer: <input type="text"/>
		Position: <input type="text" value="Investment Representative"/>
Heard How?	<input type="text" value="Mailing"/>	
Background:	<input type="text" value="I have 12 years experience running small businesses, independent cinemas that featured art and indy films. Our theaters hosted a number of film festivals over the years. I have taught 5 sections of Public Speaking at the college level. My wife is a professional artist with positions at PSU and PNCA."/>	
Skills:	<input type="text" value="I hold a BA in Media with a Minor in Fine Art. I have written reviews of art and films in a number of publications. I received an MA in Communication, the focus of my research was political art as rhetorical act. Having one foot in both the business and art community I believe my understanding of both can be an asset to the community at large."/> <input type="text" value="I would also say that many of the sensibilities that must be understood can also be in play with the library advisory board. I believe both require someone who can advocate for a complex and sometimes unpopular position but also understand the need to compromise. Having also studied mediation and conflict resolution in graduate school I believe I can assist in finding consensus in regard to matters of taste and intellectual property."/>	
Motivation:	<input type="text" value="Serving the Board would give me a chance to become involved in my newly adopted community. It would also allow me to, if accepted on the arts commission, work on a creative level that I have trained for but is less apart of my work life with Edward Jones."/>	
Goals:	<input type="text" value="In many ways it might be a bit presumptuous of me to impose my views being so new to the city. Having said this though I have invested quite a bit by buying a home and moving to the area as well. I would say that my personal goal in relation to Beaverton is contribute to the City being one of the best run municipalities in the region."/>	

AGENDA BILL

Beaverton City Council Beaverton, Oregon

SUBJECT: Bid Award – Asphaltic Concrete
Requirements Contract

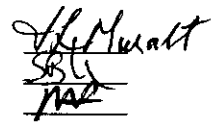
FOR AGENDA OF: 08-07-06 **BILL NO:** 06135

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Public Works 

DATE SUBMITTED: 07-12-06

CLEARANCES: Purchasing
Finance
City Attorney



PROCEEDING: Consent Agenda
(Contract Review Board)

EXHIBITS: 2006-07 & 07-08 In-house Overlay List
Washington County Bid Summary

BUDGET IMPACT

EXPENDITURE REQUIRED \$400,000*	AMOUNT BUDGETED \$400,000*	APPROPRIATION REQUIRED \$
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*Account number 101-85-0732-422 Street Fund – Street Maintenance Program – Street Improvements Account. The amount budgeted indicates the funding for asphalt materials that was a component of the \$767,000 budget that was appropriated for in-house street overlay projects and street maintenance activities. Staff anticipates the estimated amount of asphalt that will be purchased for the in-house street overlay projects and street maintenance activities to be \$400,000, for FY 2006-07, \$440,000 for FY 2007-08 & \$484,000 for FY 2008-09.

HISTORICAL PERSPECTIVE:

The City of Beaverton and Washington County did a joint bid process for asphaltic concrete. This process was possible per ORS 279A.210 Joint Cooperative Procurements and the City's Purchasing Code 46-0420. Per the requirements of ORS 279A.210, Washington County, the administering agency named the City in the solicitation and specified the City's estimated purchases.

The FY 2006-07 Budget includes funding to purchase asphalt for street overlays and street maintenance activities. City staff will resurface (27) local streets as detailed in the attached overlay listing.

INFORMATION FOR CONSIDERATION:

Invitation to bid was advertised by Washington County in the Daily Journal of Commerce on June 12, 2006. Bids were opened on July 7th at 11:00 AM at the Washington County Public Services Building. Bids were received from three (3) vendors; Baker Rock, Lakeside Industries and Morse Brothers, all located in the Portland Metropolitan area. The solicitation included language that a recommendation would be made to award a 3-year requirements contract to each responsible bidder. The contract expires on July 31, 2009 and will allow the Public Works Department to purchase asphaltic concrete on an as-needed basis for FY 2006-07, FY 2007-08 and FY 2008-09. No contractor will be promised minimum or maximum quantities. In purchasing asphaltic concrete for a particular project, Public Works will choose the lowest priced contractor (with available product, at the time required) on the basis of contract price plus the estimate of the cost of transporting the product to the job-site.

RECOMMENDED ACTION:

Council, acting as Contract Review Board, award contracts to Baker Rock, Lakeside Industries and Morse Brothers for the purchase of asphaltic concrete in the estimated amount of \$400,000 for FY 2006-07 and approval for City staff to extend the contracts the 2 additional years based on Council's approval of the future FY 2007-08 and FY 2008-09 Budgets. The estimated usage for FY 2007-08 is \$440,000 and estimated usage for FY 2008-09 is \$484,000.

**City of Beaverton
Overlay Schedule 2006-07**

Street Name	Street Boundaries
11 th St	Alger to Lee
12 th St	Alger to Lee
12 th St	Hall to Lombard
13 th St	Alger to Lee
14 th St	Alger to Lee
142 nd Ave	Hart to Barlow
Heather Ct.	130 th to cul-de-sac
Kimberly Dr	Hart to 141st
136th Ave	Hart to 27th
31st St	Hyland to 136th
27th St	Wilson to 136th
Fir Ct.	Glenn to cul-de-sac
Gem Ln	Cedar Hills to cul-de-sac
Morgan Dr	Sorrento to Carr
Lee St	11 th to King
Main Ave	Farmington to 3rd
1 st St.	Stott to Lombard
Erickson Ave.	Allen to 5th
141 st Ave.	TV Hwy to Millikan Way
142 nd Ave	TV Hwy to Farmington
Hart Rd	Murray to 136th
*173 rd Ave	Cornell to Walker
**Beech Dr.	Maple to Maple
**Larch Dr.	Maple to Maple
**Maple Ave.	BH to 5 th St.
**9 th St.	Hall to Lombard
110 th Ave	North & South cul-de-sac off 111th

BID SUMMARY

BID TITLE: ASPHALTIC CONCRETE (#26090B)

BID OPENING: 11:00 A.M., FRIDAY, JULY 7, 2006

BIDDER	BAKER ROCK	LAKESIDE	MORSE BRO.
MODIFIED "C" MIX	\$ 77,000	\$ 84,000	\$ 84,000
CLASS "B" MIX	150,000	160,000	164,000
CLASS "C" MIX	1,650,000	1,760,000	1,804,000
TOTAL BID	1,877,000	2,004,000	2,052,000

Note: The County intends to award contracts to all responsible bidders. Contractor will be selected on a project basis depending on price and distance from job site.

UNIT PRICING

BIDDER	BAKER ROCK	LAKESIDE	MORSE BRO.
MODIFIED "C" MIX	\$38.50	\$42.00	\$42.00
CLASS "B" MIX	37.50	40.00	41.00
CLASS "C" MIX	37.50	40.00	41.00

AGENDA BILL

Beaverton City Council Beaverton, Oregon

SUBJECT: Waiver of Sealed Bidding – Purchase
Nextel Cellular Phone Service from the
State of Oregon Contract No. 2285

FOR AGENDA OF: 08-07-06 **BILL NO:** 06136

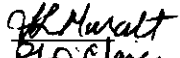
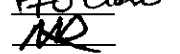


Mayor's Approval: 

DEPARTMENT OF ORIGIN: Mayor's Office

DATE SUBMITTED: 7-14-06

CLEARANCES:

Purchasing
Finance
City Attorney
Emergency
Management

PROCEEDING: Consent Agenda
(Contract Review Board)

EXHIBITS:

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$74,000*	BUDGETED \$81,036*	REQUIRED \$-0-

*The Expenditure Required is an estimate of the annual cost of cell phone services to be provided by Nextel as further explained in this Agenda Bill. The Amount Budgeted of \$81,036 represents the collective cell phone airtime costs in Account 341 (Communications Expense) that are appropriated in the FY 2006-07 Budget in the City's various Funds and Programs.

HISTORICAL PERSPECTIVE:

The importance of interoperability of communications for emergency and disaster response has been highlighted in recent events. The inability to communicate can significantly hinder response and recovery operations, putting lives at risk. In FY 2005-06 the City maintained six separate contracts/accounts for cell phone service; three with Sprint/Nextel; two with Cingular, and one with Verizon. There was also a wide range of devices (cell phones) that were being used and few of their accessories were interchangeable. In order to increase the City's communications interoperability the Emergency Management Program looked into the benefits of consolidating all of the City's three different cell phone services with one provider and proposed that the City choose Sprint/Nextel as that service provider.

Consolidating with Nextel will provide the City with a common communications platform across all City Departments including those that may be involved in emergency operations. This consolidation also provides us with an economy of scale, with 30,000 pooled minutes, while increasing our capabilities; all for about the same price as the multiple contracts combined. Like all cell phone service providers, Nextel is vulnerable to system overload during emergencies when callers exceed the system's capacity and the loss of towers disrupting connectivity; but Nextel also has advantages that compensate for the issues.

Nextel provides a radio connect feature (e.g., walkie-talkie) along with the standard cell phone capability, which operate over separate systems, so an overload of the cell part of the system does not impact the direct connect side. Additionally, as part of the service package, the City's phones will have priority in communicating over the direct connect feature. If cell service is disrupted because of damage to the towers, the direct connect feature can be used device-to-device like standard two-way radios over a two to five mile range. The direct connect feature can also be used to communicate with emergency responders from other jurisdictions who have switched to Nextel including TVF&R (Tualatin Valley Fire

and Rescue) and Washington County Sheriff's Office. The consolidation under Nextel is also aimed at limiting the number of device types being used to three, so that accessories like headsets, chargers, and SIMS cards can be used interchangeably.

INFORMATION FOR CONSIDERATION:

Under the state contract the Nextel service plan will cost \$6,162.92 for a city-wide pool of 30,000 minutes per month, which equates to \$73,955 for a year. The initial information provided by Finance indicated that this was comparable with the combined total of the City's current services. A recent review of the past 17 months indicates that it may cost up to \$1,100 more per month; however because of the various differences between the services, an exact comparison is not feasible. Another contributing factor is that because of its convenience several City employees had switched their personal cell service to Nextel and have been using them for City business. Since the use of the direct connect feature does not count against the pooled minutes, additional savings are expected as staff becomes familiar with using the direct connect rather than making standard cell calls.

Cellular phone service is currently available for immediate purchase from the State of Oregon Price Agreement #2285 through Nextel Communications, located in Beaverton, Oregon. Oregon law and the City's purchasing code allow the purchase of this service off the State of Oregon Price Agreement.

The FY 2006-07 Budget includes \$81,036 in the Communications Expense Accounts in the City's various Funds and Programs.

RECOMMENDED ACTION:

Council, acting as Contract Review Board, waive the sealed bidding requirements and authorize the Finance Department to issue a purchase order to Nextel Communications of Beaverton, Oregon for purchase of cellular phone service for Fiscal Year 2006-07, as described above from the State of Oregon Price Agreement, with the option to extend the contract up to an additional four years based upon Nextel's continuing approval through the State's Price Agreement, the City's review of Nextel's service and pricing structure each year and the Council's approval of each subsequent year's budget for Communications Expense.

7/10/06 Public Hearing Continued
to 7/11/06.

7/11/06 Public Hearing Continue
to 8/07/06. Oral testimony
closed at 7/11/06 hearing.

SUBJECT: APP 2006-0004: Appeal of Town Square
Too – Wal Mart Approval (DR 2005-0068)

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

08/07/06

~~07/11/06~~

FOR AGENDA OF: 07-10-06 **BILL NO:** 06124

Mayor's Approval:

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 06-30-06

CLEARANCES: City Attorney

Devel. Services

PROCEEDING: Public Hearing

EXHIBITS: **Section 1** – Exhibits regarding the Appeal; 06-09-06 – 06-29-06.
Section 2 – Exhibits submitted by staff, applicant and public during the period of BDR hearings; 05-02-06 – 06-01-06.
Section 3 – Exhibits submitted by staff and applicant during review period and reviewed as part of BDR staff report; 6-30-05 – 06-01-06.
Section 4 – Public testimony submitted 05-16-05– 05-01-06.
See Table of Contents for complete listing.

BUDGET IMPACT

EXPENDITURE REQUIRED\$0	AMOUNT BUDGETED\$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

The Washington County Community Plan zones this site (Transit Oriented – Retail Commercial, TO-RC), but the property has been annexed to the City of Beaverton. Until such time that the City establishes City zoning, the City is required to review development on the site in accordance with both Washington County Development Code standards and City of Beaverton Development Code standards. After annexation and prior to the subject development application being filed with the City, the property owner and the City agreed to submit an Inter-Governmental Agreement (IGA) to Washington County the effect of which would suspend the application of Beaverton Development Code standards on the subject site and would allow the County to review and process the land use application for the development of the subject site subject to all applicable Washington County Development Code standards. The Washington County Board of Commissioners declined to enter into the proposed IGA and therefore declined to process the Wal Mart applications. Because the County declined to review and process the land use applications for the proposed development, the City conducted the review in accordance with Section 10.40.1 of the City's Development Code. This section of Beaverton's Development Code requires that the City use the County's Code standards unless there are comparable City standards to use in the review. Therefore, the Town Square Too – Wal Mart development has been reviewed according to a combination of City and County Code requirements.

The applicant requests Design Review Three (DR 2005-0068) approval of proposed development on the subject site. The scope of the Design Review application is for a development containing an approximately 152,300 square foot retail building, a 4,265 sq.ft. office/retail building, a 9,200 sq.ft. retail building, pedestrian plaza areas, public and private streets, driveways, parking within open lots and a parking garage, street and traffic signal improvements. The site is approximately 9.3 acres in size. The Loading Determination (LO 2005-0003) has been approved by the BDR and was not appealed. A Tree Plan Two application, (TP 2005-0017), was determined to be unnecessary and staff have recommended that the applicant withdraw the TP application. At the Board of Design Review hearing, the applicant stated for the record that they would be withdrawing the TP application.

INFORMATION FOR CONSIDERATION:

The appellant, Save Cedar Mill, has submitted an appeal (APP 2006-0004) objecting to the BDR's approval of the Design Review application. A staff report is prepared in response to the appeal and to the applicant's appeal response, and is attached to this Agenda Bill under Section 1 for consideration.

RECOMMENDED ACTION:

Staff recommend that the City Council uphold the Board of Design Review's approval of DR 2005-0068, as summarized in the BDR Land Use Order #1871 dated June 9, 2006, by denying the appeal, APP 2006-0004. Staff further recommend that the City Council direct staff to prepare findings based on the Council's decision and provide the Notice of Decision to all parties on record.

MEMORANDUM

City of Beaverton

Office of the City Recorder

To: Mayor Drake and Councilors
From: Sue Nelson, City Recorder
Date: August 3, 2006
Subject: **Agenda Bill 06124: APP 2006-0004: Appeal
of Town Square Too - Wal Mart Approval
(DR 2005-0068)**

The complete agenda bill and attachments for Agenda Bill 06124 are available for review in the City Recorder's Office on the third floor of Beaverton City Hall, 4755 SW Griffith Drive, Beaverton, OR. The office is open weekdays between 8:00 a.m. and 5:00 p.m. Due to the large volume of the attachments, they were not included with the agenda bill and staff report on the Web site.

If you have any questions regarding this item, please call (503) 526-2650.

AGENDA BILL

Beaverton City Council Beaverton, Oregon

SUBJECT: ZMA2006-0005 Butler Rezone; an Ordinance Amending Ordinance No. 2050, the Zoning Map, as to a Specific Parcel, from Urban Standard Density Residential (R-7) to Urban Standard Density Residential (R-5) (3600 SW 100th Avenue)

FOR AGENDA OF: 8-7-06 **BILL NO:** 06137

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 7-24-06

CLEARANCES: Devel Serv 

City Attorney 

PROCEEDING: First Reading

EXHIBITS: Ordinance
Zoning Map Exhibit A
Land Use Order No. 1874

BUDGET IMPACT

EXPENDITURE REQUIRED \$	AMOUNT BUDGETED \$	APPROPRIATION REQUIRED \$
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HISTORICAL PERSPECTIVE:

On June 14, 2006, the Planning Commission held a public hearing to consider an application to amend Ordinance No. 2050, the Zoning Map, by redesignating the site located at 3600 SW 110th Avenue from Urban Standard Density Residential (R-7) to Urban Standard Density Residential (R-5).

The zoning map amendment will affect all of Tax Lot 2900 (approximately 0.51 acres).

The Planning Commission has recommended approval of the request to rezone the property from Urban Standard Density Residential (R-7) to Urban Standard Density Residential (R-5) on the Zoning Map.

INFORMATION FOR CONSIDERATION:

The site of the zoning map amendment is specifically identified as Tax Lot 2900 on Washington County Assessor's Tax Map 1S1-10DD, which is generally located on the east side of SW 110th Avenue north of SW Canyon Road. The property totals approximately 0.51 acres in size.

Since no City Council hearing is required and no appeal was filed from the Planning Commission's decision, this ordinance making the appropriate change to the Zoning Map is being presented for first reading at this time.

RECOMMENDED ACTION:

Conduct First Reading.

SS:lk

Agenda Bill No: 06137

ORDINANCE NO. 4400

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE ZONING MAP, AS TO A SPECIFIC PARCEL, FROM URBAN STANDARD DENSITY
RESIDENTIAL (R-7) TO URBAN STANDARD DENSITY RESIDENTIAL (R-5)
ZMA2006-0005

WHEREAS, on June 14, 2006, the Planning Commission conducted a public hearing to consider an application to amend Ordinance No. 2050, the Zoning Map, redesignating the site located at 3600 SW 110th Avenue from Urban Standard Density Residential (R-7) to Urban Standard Density Residential (R-5); and

WHEREAS, the Planning Commission received testimony and exhibits and recommended approval of this zone change; and

WHEREAS, no appeals were filed with the City; and

WHEREAS, the Council adopts as to criteria applicable to this request and findings thereon Development Services Division Staff Report dated June 6, 2006 and Planning Commission Land Use Order No. 1874. Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, the Zoning Map, is amended to redesignate approximately 0.51 acres, located at 3600 SW 110th Avenue from Urban Standard Density Residential (R-7) to Urban Standard Density Residential (R-5).

Section 2. The property affected by this ordinance is depicted in the attached map marked Exhibit "A" and incorporated herein. The property is more specifically described on the records of the Washington County Department of Assessment and Taxation as Tax Lot 2900 of Washington County Assessor's Map 1S1-10DD, Beaverton, Washington County, Oregon.

First reading this _____ day of _____, 2006.

Passed by the Council this _____ day of _____, 2006.

Approved by the Mayor this _____ day of _____, 2006.

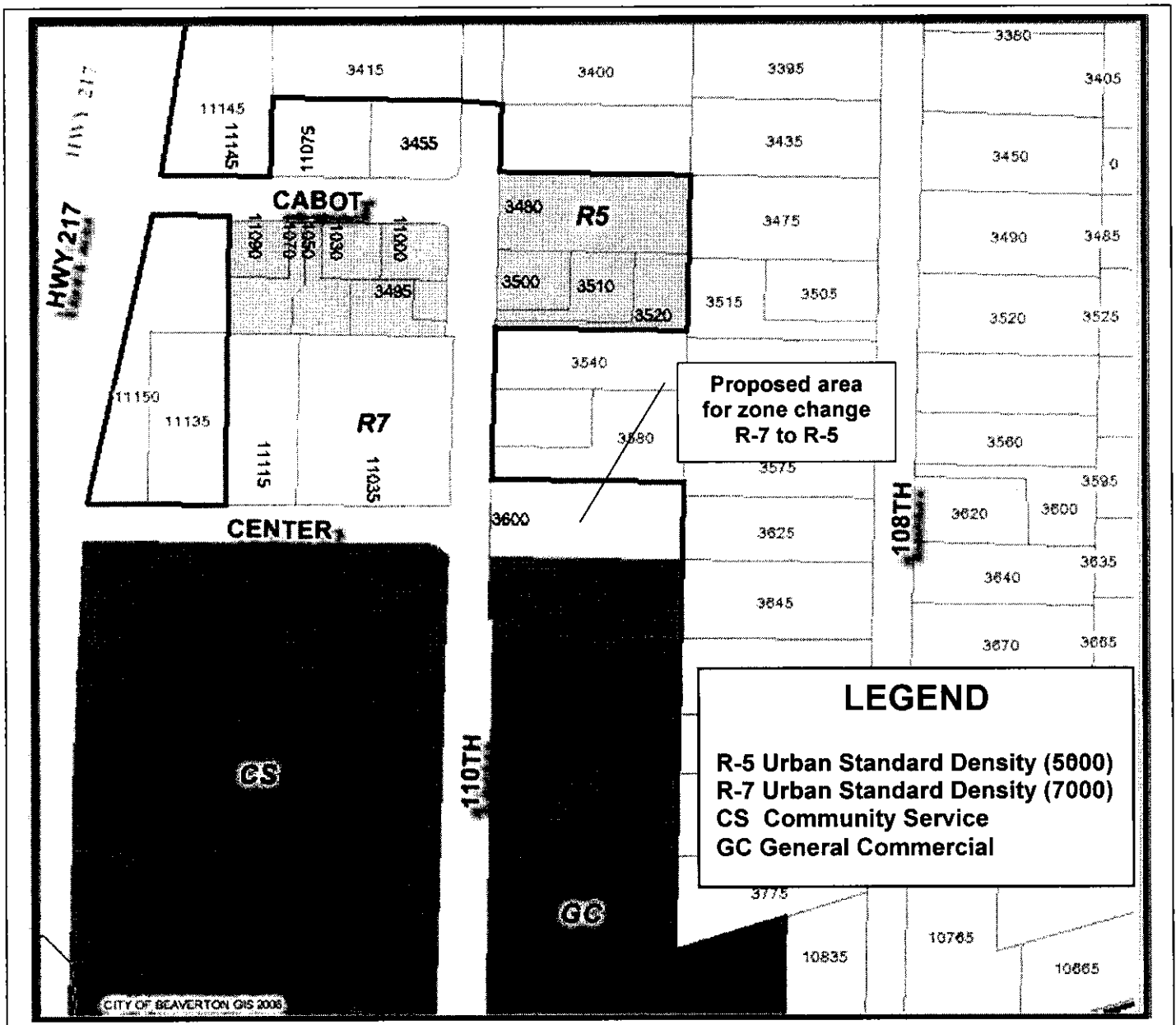
ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

EXHIBIT A



BUTLER REZONE ZMA2006-0005

**BEFORE THE PLANNING
COMMISSION FOR
THE CITY OF BEAVERTON,
OREGON**

After recording return to:
City of Beaverton, City Recorder:
4755 SW Griffith Drive
P.O. Box 4755
Beaverton, OR 97076

IN THE MATTER OF A REQUEST FOR AN)	
AMENDMENT TO THE CITY ZONING MAP)	ORDER NO. 1874
APPLICABLE FOR A 0.51 ACRE PARCEL IN THE)	ZMA2006-0005 ORDER APPROVING
URBAN STANDARD RESIDENTIAL ZONE (R-7),)	REQUEST WITHOUT CONDITIONS.
WHICH REQUIRES 7,000 SQUARE FOOT)	
MINIMUM LOT SIZES (BUTLER REZONE). IRWIN)	
BUTLER INVESTMENT GROUP LLC, APPLICANT)	

The matter came before the Planning Commission on June 14, 2006, on a request for an amendment to the Zoning Map applicable to an approximately 0.51 acre parcel in the Urban Standard Residential zone (R-7), which requires 7,000 square foot minimum lot sizes, to the Urban Standard Residential zone (R-5) which requires 5,000 square foot minimum lot sizes. The development site is generally located at 3600 SW 110th Avenue and is more specifically identified as Tax Lot 2900 on Washington County Tax Assessor's Map 1S110DD.

Pursuant to Ordinance 2050 (Development Code), Section 50.45, the Planning Commission conducted a public hearing and considered testimony and exhibits on the subject proposal.

The Commission, after holding the public hearing and considering all oral and written testimony, adopts the Staff Report dated June 6, 2006.

Therefore, IT IS HEREBY ORDERED that ZMA2006-0005 is APPROVED, based on the testimony, reports and exhibits, and evidence presented during the public hearings on the matter and based on the facts, findings, and conclusions found in the Staff Report, dated June 7, 2006.

Motion CARRIED, by the following vote:

AYES: Pogue, Winter, Bobadilla, Maks, Stephens, and Johansen.
NAYS: None.
ABSTAIN: None.
ABSENT: Kroger.

Dated this 29th day of June, 2006.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 1874 an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Recorder's Office by no later than 5:00 p.m. on Monday, July 10, 2006.


ATTEST:


LAURA KELLY
Associate Planner


STEVEN A. SPARKS, AICP
Development Services Manager

PLANNING COMMISSION
FOR BEAVERTON, OREGON

APPROVED:


ERIC H. JOHANSEN
Chairman


AGENDA BILL

Beaverton City Council
Beaverton, Oregon

08/07/06



SUBJECT: An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located at 8111 SW West Slope; CPA2006-0002/ZMA 2006-0001

FOR AGENDA OF: ~~07/17/06~~ **BILL NO:** 06129

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 06/20/06

CLEARANCES: City Attorney 
Planning Services 

PROCEEDING: ~~First Reading~~
Second Reading and Passage

EXHIBITS: Ordinance
Exhibit A - Map
Exhibit B - Staff Report

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

This ordinance is before the City Council to assign City Comprehensive Plan Land Use Map and Zoning designations for the subject property, replacing the Washington County land use designations.

The Urban Planning Area Agreement (UPAA) is specific on the appropriate Land Use Map and Zoning Map designations for the parcels thus no public hearing is required. The appropriate Land Use Map designation is Neighborhood Residential – Standard Density (NR-SD), and the appropriate Zoning Map designation is Residential – 7,000 square foot minimum land area per dwelling unit (R-7). The City land use designations will take effect 30 days after Council approval and the Mayor's signature on this ordinance.

INFORMATION FOR CONSIDERATION:

This ordinance makes the appropriate changes to Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map.

RECOMMENDED ACTION:

~~First Reading~~
Second Reading and Passage

Agenda Bill No: 06129

ORDINANCE NO. 4398

AN ORDINANCE AMENDING ORDINANCE NO. 4187, FIGURE III-1, THE COMPREHENSIVE PLAN LAND USE MAP AND ORDINANCE NO. 2050, THE ZONING MAP FOR PROPERTY LOCATED AT 8111 SW WEST SLOPE; CPA2006-0002/ZMA 2006-0001

- WHEREAS,** This property annexed to the City of Beaverton, through Ordinance 4341 in March 2005, thus the property is being redesignated in this ordinance from the County's land use designation to the closest corresponding City designation as specified by the Urban Planning Area Agreement (UPAA); and
- WHEREAS,** Since the UPAA is specific on the appropriate designations for this parcel, this is not a discretionary land use decision and therefore no public hearing is required; and
- WHEREAS,** The Council adopts as to criteria applicable to this request and findings thereon the Community Development Department staff report by Senior Planner Barbara Fryer, dated June 22, 2006, attached hereto as Exhibit B; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

- Section 1.** Ordinance No. 4187, the Comprehensive Plan Land Use Map, is amended to designate the subject property located at 8111 SW West Slope (Tax Map 1S101BB, Lot 00100) Neighborhood Residential - Standard Density on the City of Beaverton Comprehensive Plan Land Use Map, as shown on Exhibit "A" and in accordance with the UPAA.
- Section 2.** Ordinance No. 2050, the Zoning Map, is amended to designate the same property in Section 1 Residential – 7,000 square foot minimum land area per dwelling unit (R-7) on the City of Beaverton Zoning Map, as shown on Exhibit "A" and in accordance with the UPAA.

First reading this 17th day of July, 2006.

Passed by the Council this _____ day of _____, 2006.

Approved by the Mayor this _____ day of _____, 2006.

ATTEST:

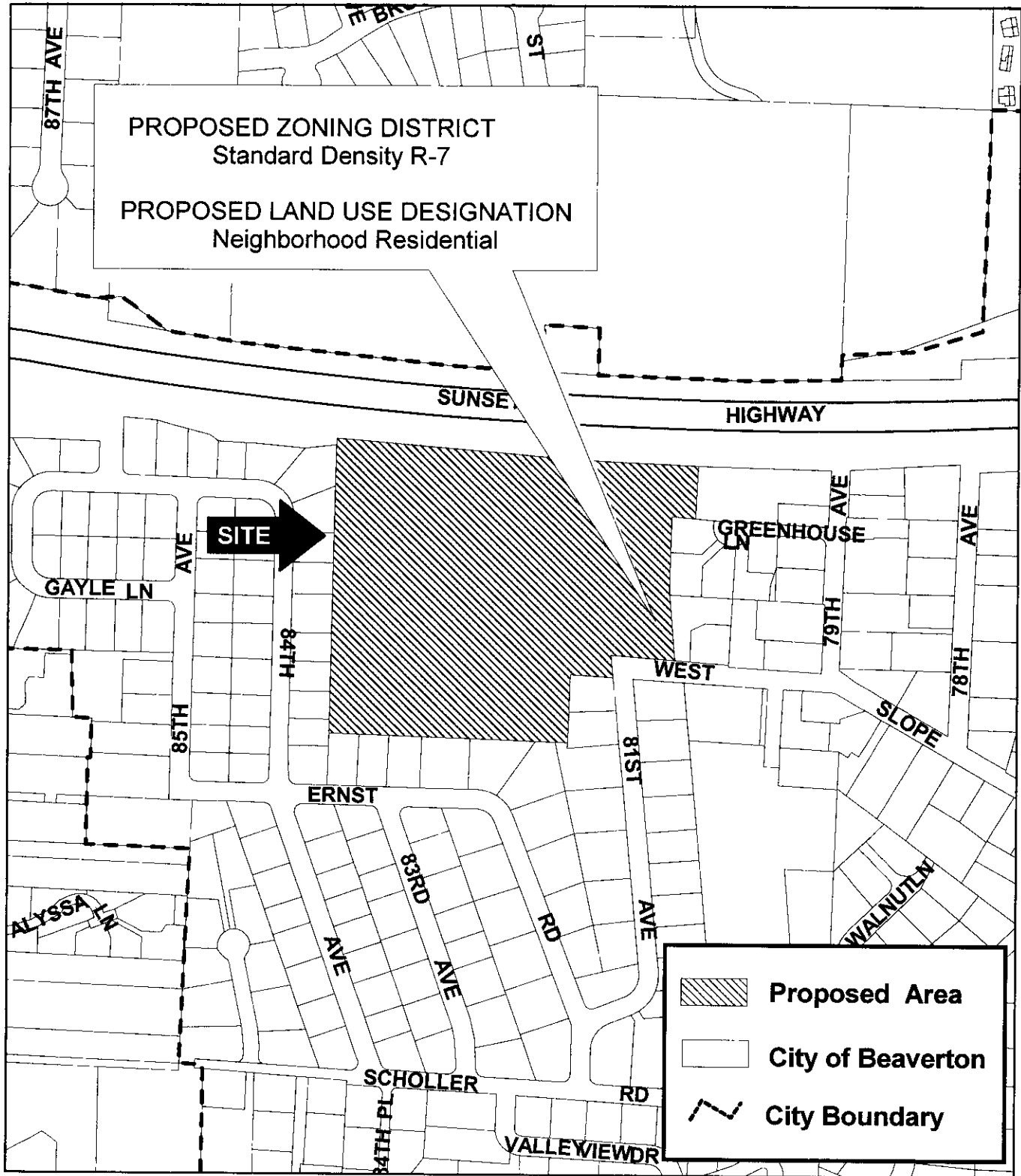
APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

CPA / ZMA VICINITY MAP

EXHIBIT "A"



CITY OF BEAVERTON

WEST SYLVAN MIDDLE SCHOOL COMPREHENSIVE PLAN
LAND USE MAP AMENDMENT AND ZONING MAP AMENDMENT

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

2/8/06

Map #

1S112BB00100

N



Application #

CPA2006-0002
ZMA2006-0001

AGENDA BILL

Beaverton City Council Beaverton, Oregon

08/07/06

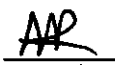
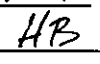
SUBJECT: An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Four Properties in Northeast Beaverton; CPA2006-0003/ZMA 2006-0002

FOR AGENDA OF: ~~07/17/06~~ **BILL NO:** 06130

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 06/22/06

CLEARANCES: City Attorney 
Planning Services 

PROCEEDING: ~~First Reading~~
Second Reading and Passage

EXHIBITS: Ordinance
Exhibit A - Map
Exhibit B - Staff Report

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

This ordinance is before the City Council to assign City Comprehensive Plan Land Use Map and Zoning designations for the subject property, replacing the Washington County land use designations.

The Urban Planning Area Agreement (UPAA) is specific on the appropriate Land Use Map and Zoning Map designations for the parcels thus no public hearing is required. The appropriate Land Use Map designation for properties 1S101DD02000, 1S101DD02001, and 1S101DD01900 is Neighborhood Residential – Medium Density (NR-MD) and the appropriate Zoning Map designation is Residential – 2,000 square foot minimum land area per dwelling unit (R-2). The appropriate Land Use Map designation for 1S101DD01800 is Corridor and the appropriate Zoning Map designation is Office Commercial (OC). The City land use designations will take effect 30 days after Council approval and the Mayor's signature on this ordinance.

INFORMATION FOR CONSIDERATION:

This ordinance makes the appropriate changes to Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map.

RECOMMENDED ACTION:

~~First Reading~~
Second Reading and Passage

Agenda Bill No: 06130

ORDINANCE NO. 4399

AN ORDINANCE AMENDING ORDINANCE NO. 4187, FIGURE III-1, THE COMPREHENSIVE PLAN LAND USE MAP AND ORDINANCE NO. 2050, THE ZONING MAP FOR PROPERTY LOCATED IN NORTHEAST BEAVERTON; CPA2006-0003/ZMA2006-0002

WHEREAS, The four properties were annexed under Ordinance 4341 in March 2005, thus the property is being redesignated in this ordinance from the County's land use designations to the closest corresponding City designations as specified by the Urban Planning Area Agreement (UPAA); and

WHEREAS, Since the UPAA is specific on the appropriate designations for this parcel, this is not a discretionary land use decision and therefore no public hearing is required; and

WHEREAS, The Council adopts as to criteria applicable to this request and findings thereon the Community Development Department staff report by Senior Planner Barbara Fryer, dated June 22, 2006, attached hereto as Exhibit B; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 4187, the Comprehensive Plan Land Use Map, is amended to designate the subject properties on Map and Tax Lots 1S101DD02000, 1S101DD02001, and 1S1DD01900 Neighborhood Residential - Medium Density and one property on Map and Tax Lot 1S101DD01800 Corridor on the City of Beaverton Comprehensive Plan Land Use Map, as shown on Exhibit "A" and in accordance with the UPAA.

Section 2. Ordinance No. 2050, the Zoning Map, is amended to designate properties on Map and Tax Lots 1S101DD02000, 1S101DD02001, and 1S1DD01900 Residential - 2,000 square foot per dwelling unit and one property on Map and Tax Lot 1S101DD01800 Office Commercial on the City of Beaverton Zoning Map, as shown on Exhibit "A" and in accordance with the UPAA.

First reading this _____ day of _____, 2006.

Passed by the Council this _____ day of _____, 2006.

Approved by the Mayor this _____ day of _____, 2006.

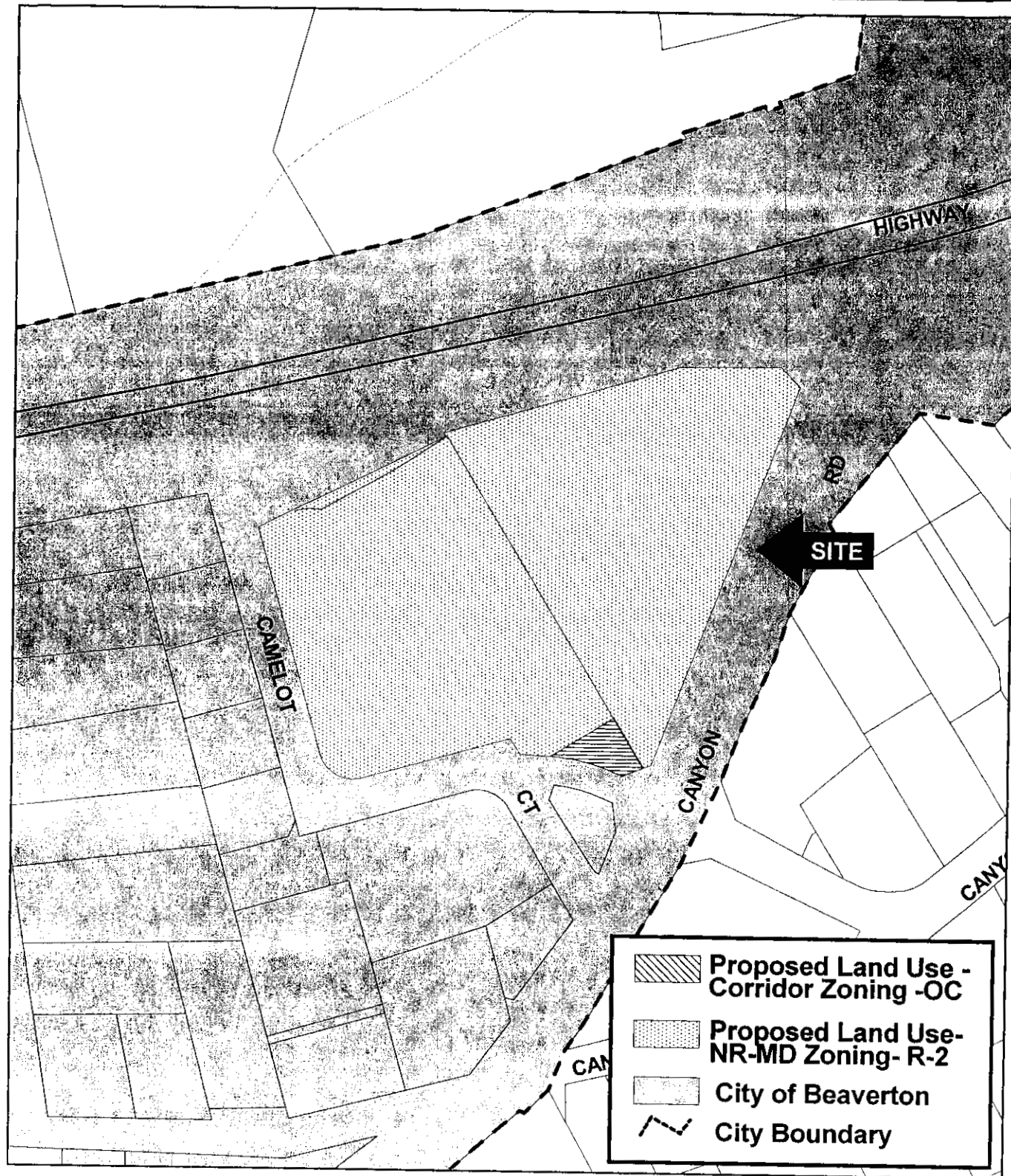
ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

CPA / ZMA VICINITY MAP EXHIBIT "A"



CITY OF BEAVERTON

WEST SLOPE APARTMENTS COMPREHENSIVE PLAN LAND USE MAP AMENDMENT AND ZONING MAP AMENDMENT

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

2/8/06

Map #

VARIOUS

N



Application #

CPA2006-0003

ZMA2006-0002

002